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Mar 15/89 - Apr 5/89

URBAN/MUNICIPAL

AGENDAS/MINUTES OF THE  
PLANNING AND DEVELOPMENT  
COMMITTEE OF COUNCIL







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## THE CORPORATION OF THE CITY OF HAMILTON

OFFICE OF THE CITY CLERK

CA4 ON HBL A05  
CSIP4  
1989

1989 March 9th

### NOTICE OF MEETING

Planning and Development Committee  
Wednesday, 1989 March 15th  
1:00 o'clock p.m.  
Room 233, City Hall

Susan K. Reeder  
Secretary

SKR:dbm

ZONING APPLICATIONS WILL BE HEARD IN THE COUNCIL CHAMBERS.

### AGENDA

1. Minutes of the meeting held Wednesday, 1989 March 1st.

### BUILDING COMMISSIONER

2. Demolition Permit Applications.
3. Review of Functions of the Building Department.







ALDERMAN AGRO, ALDERMAN McCULLOCH

4. Delegation - Corktown Stinson Neighbourhood - Carter Park.  
(a) Report - Director of Community Development.

DIRECTOR OF COMMUNITY DEVELOPMENT

5. Proposed Budget and Schedule of Payments - Jamesville B.I.A.
6. New Member to the Board of Management - International Village B.I.A.
7. Provincial/Municipal Housing Agreement.

DIRECTOR OF PROPERTY

8. Expropriation - 393 Sherman Avenue north - Alpha Enclave (West).

CHIEF ADMINISTRATIVE OFFICER

9. Sheraton Hotel.

CITY SOLICITOR

10. Payment of account - Settlement of Expropriation - 14 Market Square.

LOCAL ARCHITECTURAL CONSERVATION ADVISORY COMMITTEE

11. Heritage Permit for Alterations - 252, 262, 266 James Street South.

COMMISSIONER OF ENGINEERING

12. St. Elizabeth Village Open Storm Water Channel.  
(a) Report - Commissioner of Engineering.  
(b) Correspondence - Terence A. Whelan, Solicitor for St. Elizabeth Village.

DIRECTOR OF LOCAL PLANNING

13. Proposed Red Hill Expressway Local Street Network.
14. Reconfirmation of Urban Design Committee.







ZONING APPLICATIONS

COUNCIL CHAMBERS

3:00 o'clock p.m.

15. (a) Zoning Application 88-104, for land in the area south of Rymal Road East, and east of the proposed extension of Upper Gage Avenue, Broughton East Neighbourhood.
- (b) Revision to Draft Approved Plan of Subdivision Lillian Heights.
16. Zoning Application 88-114, for property at 1412 Upper Gage Avenue; Eleanor Neighbourhood.
- (a) Letter of Submission - Mr. & Mrs. Strowbridge, 1406 Upper Gage.
17. Zoning Application 88-105, for properties at 250 and 252 Gibson Avenue; Gibson Neighbourhood. (report to follow)

3:15 o'clock p.m.

18. Zoning Application 88-116, for property at the north-east corner of Quaker Crescent and Queen Victoria Drive, Quinndale Neighbourhood.

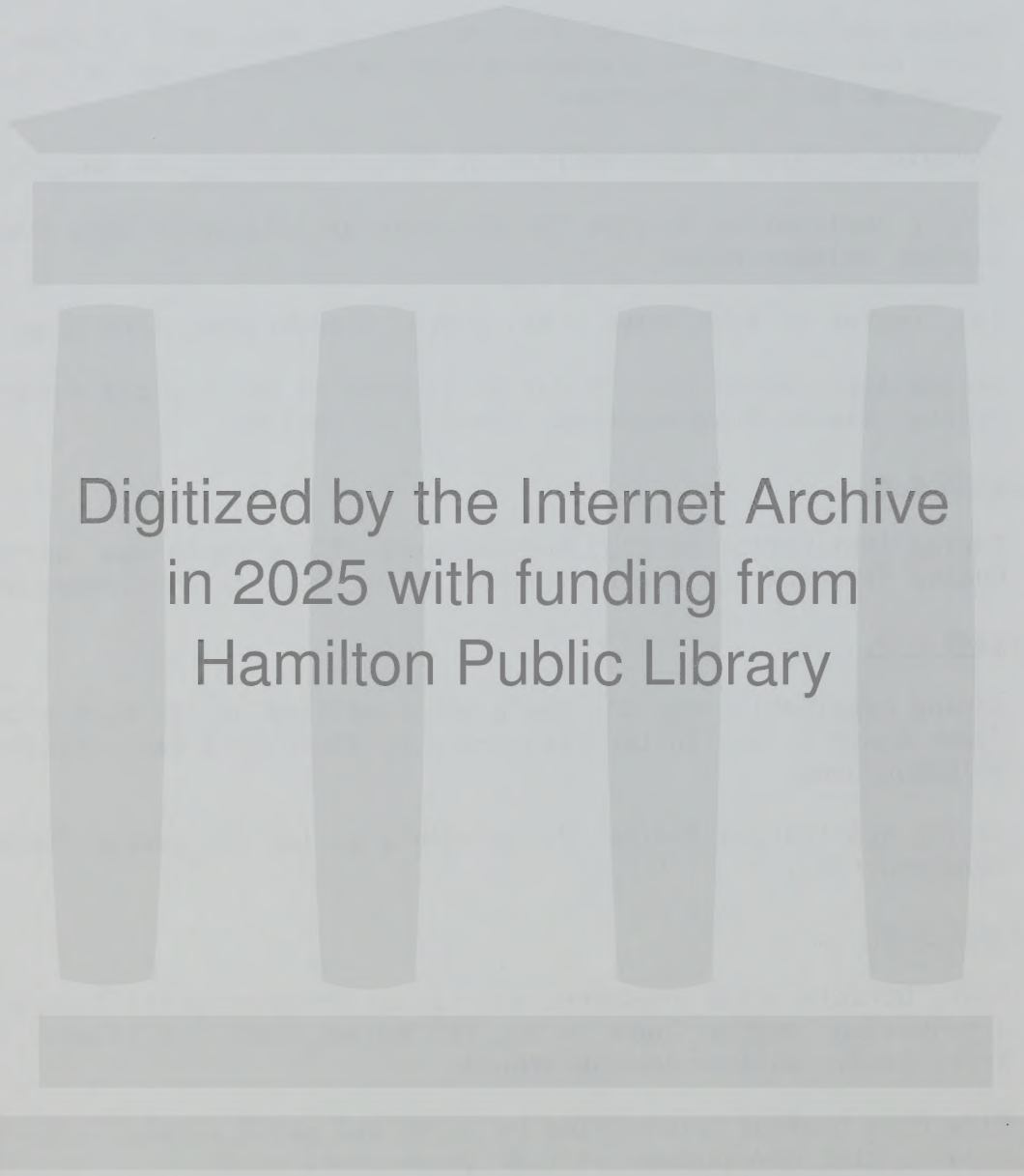
3:30 o'clock p.m.

19. Zoning Application 88-125, for a strip of land on the east side of Upper James Street in the area south of Rymal Road East; Allison Neighbourhood.
20. Zoning Application 88-128, for property at 189 Oak Avenue; Landsdale Neighbourhood.

3:45 o'clock p.m.

21. Draft Official Plan Amendment No. 72 and Proposed Draft Plan of Subdivision "Wheton Court" - No. 107 Mohawk Road East (former, Public Works land); Balfour Neighbourhood.
22. Site Plan Control Application DA 88-48 and modification to ZA 87-48 for a commercial development at 1400 Upper James Street.
23. Other Business.
24. Adjournment.





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Wednesday, 1989 March 1  
1:00 o'clock p.m.  
Room 233, City Hall

The Planning and Development Committee met.

There were present: Alderman J. Smith, Chairman  
Alderman W. McCulloch  
Alderman D. Ross  
Alderman H. Merling  
Alderman D. Christopherson  
Alderman B. Hinkley  
Alderman M. Kiss

Regrets: Alderman F. Lombardo, Vice-Chairman - Vacation  
Mayor Robert M. Morrow - Civic Business

Also present: Alderman G. Copps  
Mr. V. Abraham, Director of Local Planning  
Mr. J. Schwarz, Regional Planning Department  
Mr. P. Lampman, Building Department  
Mr. B. Allick, Building Department  
Mr. M. Watson, Real Estate Division  
Mr. K. Brenner, Regional Engineering Department  
Mr. P. Barkwell, City Solicitor's Department  
Mr. J. Robson, Building Department  
Mrs. N. Chapple, Planning Department  
Mr. R. Karl, Traffic Department  
Mr. J. Sakala, Planning Department  
Mr. P. Mallard, Planning Department  
Mrs. Susan K. Reeder, Secretary

The Committee was in receipt of minutes of their meetings held Wednesday, 1989 February 15 and Thursday, 1989 February 16. The Committee agreed to APPROVE these minutes.

The Committee was in receipt of a report from the Building Commissioner dated 1989 February 22 respecting Demolition Permit Applications.

The Committee APPROVED the following:

That the Building Commissioner BE AUTHORIZED to issue a demolition permit for the following property:

- (a) 179 Young Street.

The Committee was in receipt of a report from the Building Commissioner dated 1989 February 21 respecting Amendments to By-Law-87-312 respecting Appointment of Inspectors.

The Committee APPROVED the following:

- (a) That the City Solicitor BE AUTHORIZED to amend By-law 87-312, Section 9(a) by ADDING the following names:

- (i) Steve Teal
- (ii) Michael Verboom

- (b) and by DELETING the following names:

- (i) Michael Reilly
- (ii) Bernardo Agro
- (iii) Donald Bodnar

NOTE: Due to recent changes in the staff of the Building Department, By-law 87-312 respecting the Appointment of Inspectors needs to be amended to accommodate these changes.

Minutes -  
1989 February 15 &  
1989 February 16.

Demolition Permit  
Applications.

Amendments to By-  
law 87-312 respectin  
Appointment of  
Inspectors.



Revision - Board  
of Management -  
Concession Street  
B.I.A.

The Committee was in receipt of a report from the Director of Community Development dated 1989 February 22 respecting a Revision to the By-law respecting the Board of Management for the Concession Street B.I.A.

The Committee APPROVED the following:

- (a) That, By-law 86-144, appointing the Concession Street B.I.A. Board of Management, BE AMENDED to add the following name:

(i) E. McKay Royal Bank

- (b) That, the City Solicitor BE AUTHORIZED and directed to amend By-law 86-144 pursuant to (a) above.

NOTE: At the Board of Management Meeting of 1989 January 18, E. McKay was appointed to the vacant directorship and position of Treasurer.

Commercial Facade  
Loan Programme -  
1059 - 1065 King  
Street West.

The Committee was in receipt of a report from the Director of Community development dated 1989 February 15 respecting a Commercial Facade Loan Programme Loan.

The Committee APPROVED the following:

That a repayable Commercial Facade Loan Programme loan, in the amount of fifty thousand dollars (\$50,000.) BE APPROVED for John Mouskos, 1059-1065 King Street West. The interest rate to be 6-1/8 percent, amortized over 10 years.

Grant/Loans,  
Ontario Home  
Renewal Programme.

The Committee was in receipt from the Director of Community Development dated 1989 February 9 respecting Grant/Loans under the Ontario Home Renewal Programme (O.H.R.P.).

The Committee APPROVED the following:

That the Director of Community development BE AUTHORIZED to process the following grant/loan(s) under the Ontario Home Renewal Programme (O.H.R.P.) in the amounts not to exceed \$7,500. The actual amount of grant or loan to be determined by inspection of the property under the Property Standards By-law 74-74 and pursuant to Regulation 506 (R.R.O. 1980) under The Housing Development Act for the Ontario Home Renewal Programme.

(a) Nancy MacBride  
46 East 16th Street

(b) Tekla Andrezejczuk  
58 Barnesdale Avenue South

Release of Building  
Covenants -  
42 Keefer Court.

The Committee was in receipt of a report from the Director of Property dated 1989 February 13 respecting Release of Building Covenants - 42 Keefer Court.

The Committee APPROVED the following:

That the City Solicitor BE AUTHORIZED to prepare a Quit Claim Deed from the City of Hamilton to the present owners of 42 Keefer Court, Hamilton, Ontario to release the property from the construction covenants to the City as contained in deed number 436686 C.D.

NOTE: In adopting Item 16 of the Twelfth Report of the Planning and Development Committee, City Council on 1987, June 23 authorized the sale of Parts 15 and 16, Registered Plan 62R-7820 to Tuite Construction Limited. The transaction was completed on 1987, November 25. Their proposed building is now completed.



The Committee was in receipt of a report from the Commissioner of Engineering dated 1989 February 7 respecting Subdivision Agreements - "Call B.U.D." Signs.

Subdivision  
Agreements  
"Call B.U.D." signs.

The Committee APPROVED the following:

That the City Solicitor BE AUTHORIZED to amend the City's Subdivision Agreement to require the Subdividers erect a "Call B.U.D." sign in conjunction with the present required sign showing land use, with the sign to be supplied by the utility companies.

NOTE: The utility companies are experiencing considerable underground plant damages because various people excavate before requesting the companies to locate their facilities. The "Call B.U.D." system is a one phone number, one-call system which automatically triggers all utilities to locate in the field their plant prior to excavation. This service is provided free of charge.

The proposal is that the subdivider mount a sign, to be provided free by the utilities, in conjunction with the sign now required by the City of Hamilton. The purpose of the sign is to advertise this one-call system, and that this requirement be added to the Subdivision Agreement.

The Committee was in receipt of a report from the Commissioner of Engineering dated 1989 February 21 respecting Enforcement of Subdivision Agreements.

Enforcement of  
Subdivision  
Agreements.

Following discussion on this matter the Committee APPROVED the following:

- (a) That the City Solicitor BE AUTHORIZED and directed to take all necessary steps, including Court action, to force subdividers to comply with the City's Subdivision Agreement once the Solicitor has been informed by the Building Commissioner or the Commissioner of Engineering that a subdivider has defaulted on a Subdivision Agreement; and,
- (b) That the City Solicitor BE AUTHORIZED and directed to prepare the appropriate By-law for submission to City Council.

NOTE: The section pertaining to grading in the City's Subdivision Agreement is based on the principle that the subdivider's engineer will provide to the City a certificate when grading has been completed satisfactorily. City Council intentionally, and with the support of City staff, decided on this procedure in order to avoid additional staff and funds to survey each lot and parcel. Instead the onus is placed on the subdivider to prove that the grading complies with the original plan.

Under these agreements a default occurs when the certificate is not delivered on a specific date. The assumption by Committee and staff in implementing the procedure was that Court action would be commenced upon default; otherwise, there would be little incentive for subdividers to rectify grading difficulties.

Over the last several years, numerous subdivisions have become overdue in the delivering of grading certificates and have been turned over to the Solicitor for further action.

There are very few grading deficiencies of a serious nature if one gives due weight to the number of lots and buildings involved. The vast majority appear to be satisfactory, or have been changed by the present land owners. However, under the City Council's policy, City staff do not carry out all investigations. Instead, the subdividers are supposed to provide the City with the previously described certificate.

The City's Legal Department has advised that they are unable to take further action without a directive from Council.

The above-referenced recommendation will provide the City Solicitor with the necessary authority to defend the City's Subdivision Agreement.



Added item -  
Watercourse -  
St. Elizabeth  
Village.

Alderman McCulloch asked to have an added item considered by the Committee and he introduced Mr. T. Whelan, Solicitor for St. Elizabeth Village to the Committee. Mr. Whelan distributed a letter to the Committee dated 1989 March 1 respecting the ownership of the watercourses in St. Elizabeth Village. Mr. Whelan also referred to correspondence from Mr. P. Barkwell of the City Solicitor's Department, a copy of his letter which was attached to Mr. Whelan's document.

Mr. P. Barkwell of the City Solicitor's Department and Mr. K. Brenner of the Regional Engineering Department addressed the Committee on this matter.

The Committee then discussed this matter and it was agreed that this item be TABLED until the next meeting of the Committee in order to give members an opportunity to discuss this matter with staff.

It was also agreed that a staff report and recommendation be obtained for this meeting.

Cash in lieu  
of Parkland -  
"Highridge Hills -  
Stage 2"

The Committee was in receipt of a report from the Commissioner of Engineering dated 1989 February 21 respecting Cash Payment in Lieu of 5% Parkland Dedication for "Highridge Hills - Stage 2".

The Committee APPROVED the following:

That the City of Hamilton ACCEPT the sum of \$40,000. as cash payment in lieu of 5% dedication in connection with "Highridge Hills - Stage 2", Hamilton, this being the cash requirement under Section 50 of the Planning Act.

NOTE: These lands are located east of Upper Sherman Avenue and north of Stone Church Road in the Randall Neighbourhood.

Designation -  
256-258 MacNab  
Street North.

The Committee was in receipt of a report from the Secretary of the Local Architectural Conservation Advisory Committee dated 1989 February 22 respecting Designation of 256-258 MacNab Street North.

The Committee APPROVED the following:

(a) That APPROVAL be given to the "Intent to Designate" 256-258 MacNab Street North as a property of historical and architectural value, pursuant to the provisions of the Ontario Heritage Act, 1983, as outlined in the Reasons for Designation, attached herewith and marked APPENDIX "A", and

(b) That the City Solicitor BE AUTHORIZED and directed to take the appropriate action to have this property designated pursuant to the provisions of the Ontario Heritage Act, 1983.

Demolition Permit  
Application -  
105 Aberdeen  
Avenue.

The Committee was in receipt of a report from the Secretary of the Local Architectural Conservation Advisory Committee dated 1989 February 23 respecting Demolition Permit Application for 105 Aberdeen Avenue, a listed building.

The Committee APPROVED the following:

That City Council NOT SUPPORT the demolition of 105 Aberdeen Avenue, a listed building.

NOTE: The Local Architectural Conservation Advisory Committee at its meeting held 1989 February 13 recommended that L.A.C.A.C. not support the demolition permit for 105 Aberdeen Avenue and approved this property as being eligible for designation pursuant to the Ontario Heritage Act, 1983. Staff have been requested to undertake the necessary research and prepare Reasons for Designation.

The Planning and Development Committee at its meeting held 1989 February 1 referred the demolition permit application for this property to the Local Architectural Conservation Advisory Committee for comment.

The Planning and Development Committee also recommended to City Council that the Demolition Control By-law be applied to this property.

The Committee was in receipt of a report from the Chairman of the Business Land Use Advisory Board dated 1989 February 13 respecting a Revision to the Terms of Reference of the Business Land Use Advisory Board and an increase in membership on that Board.

Revision - Terms  
of Reference -  
Business Land Use  
Advisory Board.

The Committee APPROVED the following:

- (a) That the revised Terms of Reference of the Business Land Use Advisory Board, attached herewith and marked APPENDIX "B", BE APPROVED; and,
- (b) That the City Clerk BE DIRECTED to advertise in the newspaper for two citizen members of the Business Land Use Advisory Board for a term of office to expire with the term of Council.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 February 20 respecting Draft Plan of Subdivision "Abbey Hill Farm - Phase 3".

Draft Plan of  
Subdivision -  
"Abbey Hill Farm -  
Phase 3"

The Committee APPROVED the following:

- (a) That APPROVAL be given to Subdivision Application 88-22, Shedaco Holdings Ltd., owner, to establish a draft plan of subdivision, south of Rymal Road, west of West 5th Street, subject to the following conditions:
  - (i) That this approval apply to the plan prepared by Ashenhurst Nouwens Ltd., dated 1988, October 18 showing 6 lots and one block (Block "7") as a 0.3m reserve.
  - (ii) That the street be dedicated as a public highway on the final plan.
  - (iii) That the street be named to the satisfaction of the City of Hamilton and the Regional Municipality of Hamilton-Wentworth.
  - (iv) That the final plan conform with the Zoning By-law approved under The Planning Act.
  - (v) That such easements as may be required for utility or drainage purposes be granted to the appropriate authority.
  - (vi) That the owner provide the City of Hamilton with a certified list showing the net area and width of each lot and block in the final plan.
  - (vii) That the open side of the road allowance (Block "7") created by the plan be terminated in a 0.3m reserve to be conveyed to the City of Hamilton.
  - (viii) That the owner shall erect a sign in accordance with Section XI of the subsequent Subdivision Agreement prior to the issuance of a final release by the City of Hamilton.
  - (ix) That the owner agree in writing to satisfy all the requirements, financial and otherwise, of the City of Hamilton.
- (b) That the subdivision agreement BE ENTERED into by the Corporation of the City of Hamilton and the owner to provide for compliance with the conditions of approval established by the Hamilton-Wentworth Region with respect to this application (SA-88-22) Shedaco Holdings Ltd., owner, proposed draft plan of subdivision, and that the City execute the agreement when the said conditions have been met and the City's share of the cost of installing municipal services has been approved by City Council.



Proposed Draft  
Plan of  
Condominium  
"Lancing  
Corporate Centre"

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 February 20 respecting Proposed Draft Plan of Condominium "Lancing Corporate Centre".

The Committee APPROVED the following:

That APPROVAL be given to Condominium Application SA-88-25 "Lancing Corporate Centre", 698675 Ontario Inc., owner, to establish a draft plan of condominium located at the south side of Lancing Drive, east of Nebo Road and north of Rymal Road East, subject to the following condition:

- (a) That this approval apply to the plan prepared by Guido Consoli Surveying Ltd., dated 1988, November 10.

Site Plan Control  
Application  
DA 88-122 -  
1221 Limeridge  
Road East.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 February 10 respecting Site Plan Control Application DA 88-122 for a pylon sign at 1221 Limeridge Road East (Landown Shopping Centre).

The Committee APPROVED the following:

That Site Plan Control Application DA-88-122 by Landown Shopping Centres, owners of lands known as 1221 Limeridge Road East for a pylon sign BE DENIED for the following reasons:

- (a) the pylon sign would be out of character with the surrounding low profile residential development and existing streetscape;
- (b) approval would set an undesirable precedent for future applications for pylon signs; and,
- (c) it is contrary to the intent of the Neighbourhood Shopping District which permits only a "business identification sign that is a wall sign".

Site Plan Control  
Application  
DA 88-126 -  
568 James Street  
North.

The Committee was in receipt of a report from the Commissioner of Planning and development dated 1989 February 9 respecting Site Plan Control Application DA 88-126 for a pylon sign at 568 James Street North.

The Committee was also in receipt of a letter from the owner of the above referenced lands dated 1989 February 28 requesting that this matter be tabled as he could not attend the meeting. The Committee agreed to proceed with this matter.

The Committee then APPROVED the following recommendation:

That Site Plan Control Application DA-88-126 by Mr. Zygmund Cwierzdzinski, owner of lands known as 568 James Street North for a pylon sign BE DENIED for the following reasons:

- (a) the pylon sign would be out of character with the surrounding low profile residential development and existing streetscape;
- (b) approval would set an undesirable precedent for future applications for pylon signs along James Street North;
- (c) it is contrary to the intent of the Neighbourhood Shopping District which permits only a "business identification sign that is a wall sign".

Adjourn to  
Council Chambers.

The Committee then adjourned to the City Hall Council Chambers for the purpose of hearing Zoning Applications.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 January 30 respecting Zoning Application 88-66, for property at 990 West 5th Street.

ZA 88-66 -  
990 West 5th Street.

The applicant was in attendance at the meeting.

The Committee APPROVED the following:

That APPROVAL be given to Zoning Application 88-66, Leucio and Concetta Zoccolillo, owners, for a change in zoning from "AA" (Agricultural) District to "C" (Urban Protected Residential, etc.) District, property located at 990 West 5th Street, as shown on the attached map marked as APPENDIX "C", on the following basis:

- (a) That the subject lands be rezoned from "AA" (Agricultural) District to "C" (Urban Protected Residential, etc.) District;
- (b) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593 and Zoning District Map for presentation to City Council;
- (c) That the proposed change in zoning is in conformity with the Official Plan for the Hamilton Planning Area.

NOTE: The purpose of the By-law is to provide for a change in zoning from "AA" (Agricultural) District to "C" (Urban Protected Residential, etc.) District for property located at 990 West 5th Street.

The effect of the By-law is to permit development of the lands for single-family dwelling purposes.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 January 20 respecting Zoning Application 88-102, for property at 1296 Upper Gage Avenue.

ZA 88-102 -  
1296 Upper Gage  
Avenue.

The applicant was in attendance at this meeting.

The Committee APPROVED the following:

That APPROVAL be given to Zoning Application 88-102, Robert Beatty, owner, for a change in zoning of the rear part of property located at 1296 Upper Gage Avenue, as shown on the attached map marked as APPENDIX "D", on the following basis:

- (a) That the subject lands be rezoned from "AA" (Agricultural) District to "C" (Urban Protected Residential, etc.) District;
- (b) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593 and Zoning District Map E-38C for presentation to City Council;
- (c) That the proposed change in zoning is in conformity with the Official Plan for the Hamilton Planning Area.

NOTE: The purpose of the By-law is to provide for a change in zoning from "AA" (Agricultural) District to "C" (Urban Protected Residential, etc.) District for property located at the rear of 1296 Upper Gage Avenue.

The effect of the By-law is to permit the rear portion of lands fronting onto Rexford Drive to be developed for single-family dwelling use.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 February 22 respecting Zoning Application 88-108, for property at 1360 Rymal Road East.

ZA 88-108 -  
1360 Rymal Road East

The Committee was also in receipt of a letter from Mr. M. J. Holland, owner of property at 101 Marlowe Drive.



Mr. M. Watson of the Real Estate Division, Property Department addressed the concerns given by the Mr. Holland in his letter.

The Committee then APPROVED the following:

That APPROVAL be given to Zoning Application 88-108, Russell and Carol Prosje, owners and prospective owners, to establish changes in zoning from "M-13" (Prestige Industrial) District (Block 1) and "M-14" (Prestige Industrial) District (Block 2) to "M-11" (Prestige-Industrial) District modified, and for a modification to the established "M-11" (Prestige Industrial) District regulations (Block 3), applicable to property located at 1360 Rymal Road East (and rear of), as shown on the attached map marked as APPENDIX "E", on the following basis:

- (a) That the lands described as Block 1 be rezoned from "M-13" (Prestige Industrial) District to "M-11" (Prestige Industrial) District;
- (b) That the lands described as Block 2 be rezoned from "M-14" (Prestige Industrial) District to "M-11" (Prestige Industrial) District;
- (c) That the "M-11" (Prestige Industrial) District regulations as contained in Section 17C of Zoning By-law No. 6593 applicable to the lands described as Blocks 1, 2 and 3 be modified to include the following variances as special provisions:
  - (i) That Section 4.(3)(a) of By-law No. 6593 shall not apply.
  - (ii) That notwithstanding Section 17C(1) of By-law No. 6593, the following uses shall also be permitted:
    1. Residential  
The existing single-family dwelling and accessory private garage.
    2. Commercial Use S.I.C.  
Identification  
Motor Home and Travel 6321  
Trailer Dealers
  - (iii) That notwithstanding Section 17C(2)(h)2 of By-law No. 6593 a split rail fence not less than 1.2m in height and not greater than 2.0m in height shall be provided and maintained along the entire westerly lot line, except for any area used for an access driveway;
  - (iv) That notwithstanding Section 17C(2)(h)4 of By-law No. 6593 the total area used for outside storage/display for the use specified in Section (ii)2 above, shall not exceed 55% of the lot area;
  - (v) That a landscaped area having a minimum width of 6.0m shall be provided and maintained along the entire westerly side lot line, except the land on which the existing building is situated and any area used for an access driveway;
- (d) That the amending By-law be added to Section 19B of Zoning By-law No. 6593 as Schedule S-1117, and that the subject lands on zoning District Map E-69E be notated S-1117;
- (e) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593 and Zoning District Map E-69E for presentation to City Council;

- (f) That the proposed change in zoning is in conformity with the Official Plan for the Hamilton Planning Area;
- (g) That the Mountain Industrial Area Plan be amended by redesignating Blocks 1 and 2 from "Restricted Industrial/Commercial" to "Restricted Commercial".

NOTE: The purpose of the By-law is to provide for the following changes in zoning for property located at 1360 Rymal Road East (and rear of).

- Block 1 - change from "M-13" (Prestige Industrial) District to "M-11" (Prestige Industrial) District, modified.
- Block 2 - change from "M-14" (Prestige Industrial) District to "M-11" (Prestige Industrial) District, modified.
- Block 3 - modification to the established "M-11" (Prestige Industrial) District.

The effect of the By-law is to permit the existing single-family dwelling and accessory private garage, and to allow the use and expansion of the subject lands for a motor home and travel trailer dealership.

In addition, the By-law provides for the following variances as special requirements:

- (a) to permit two principal uses (i.e. single-family dwelling and motor home/travel trailer dealership) on the same lot or tract of land, whereas only one use is permitted;
- (b) to require a landscaped area having a minimum width of 6.0m to be provided and maintained along the entire westerly side yard, except for the land on which the existing building is situated and any area used for access driveway(s);
- (c) to allow a split rail fence having a height of not less than 1.2m and not greater than 2.0m to be provided and maintained along the westerly side lot line, whereas a 1.5m to 3.0m high visual barrier is required;
- (d) to permit an outside storage/display area for motor homes and travel trailers having a maximum of 55% of the lot area, whereas a maximum of 5% is permitted.

The Committee was advised by the Chairman that the matter dealing with Site Plan Control Application DA-88-122 for a pylon sign at 1221 Limeridge Road East had been advertised for deliberation at 3:15 o'clock p.m., incorrectly. The Chairman asked that in fairness the applicant be given the opportunity to address the Committee.

Site Plan Control  
Application DA 88-  
122 - 1221 Limeridge  
Road East.

The applicant then spoke to the Committee requesting that consideration be given for approval of his application.

The Committee then discussed the Committee of Adjustment actions versus the Planning and Development Committee actions and then reconfirmed their decision to DENY this application as referenced to earlier in the meeting.

It was also stressed that the Director of Local Planning ensure that the Committee of Adjustment is advised of the Planning and Development Committee's action in denying this application.



ZA 88-123 -  
81 Dartnall Road.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 February 20 respecting Zoning Application 88-123, for property at 81 Dartnall Road.

The Committee APPROVED the following:

That APPROVAL be given to Zoning Application 88-123, Mr. E. Monkley, prospective owner, for a further modification to the established "M-13" (Prestige Industrial) District regulations to permit the installation and wiring of trailer hitches, and the assembly of light utility automobile trailers, for property located at 81 Dartnall Road, as shown on the attached map marked as APPENDIX "F" on the following basis:

- (a) That the "M-13" (Prestige Industrial) District regulations as contained in Section 17E(1) of Zoning By-law No. 6593 as amended by By-law 85-35, applicable to the subject lands, be further amended to include the following variances as special provisions:
  - (i) That Section 1.(b)(ii) of By-law No. 85-35 be amended by adding after paragraph 2 the following new paragraph 3 which reads as follows:

"3. The installation and wiring of trailer hitches."
  - (ii) That Section 1.(b)(iii) of By-law No. 85-35 be renumbered as 1.(b)(iv), and the following new Section 1.(b)(iii) be added:
    - (iii) Industrial Use shall be permitted:
      1. The assembly of light utility automobile trailers.
  - (iii) That Section 1.(c)(i) of By-law No. 85-35 be deleted and the following substituted therefore:

"(1) a planting strip not less than 6.0m wide shall be provided and maintained abutting the full length of the northerly side lot line;"
  - (iv) That Section 1.(c)(ii) of By-law No. 85-35 be deleted and the subsequent sections appropriately renumbered;
  - (v) That notwithstanding Section 17E(2)(b)1.(ii) of By-law No. 6593 a side yard having a minimum width of not less than 5.0m shall be provided and maintained along the southerly side lot line;
  - (vi) That notwithstanding Section 17E(2)(b)1.(iii) of By-law 6593 a rear yard having a depth of not less than 1.0m shall be provided and maintained.
- (b) That the amending By-law be added to Section 19B of Zoning By-law No. 6593 as Schedule S-862a, and that the subject lands on Zoning District Map E-69D be notated S-862a;
- (c) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593 and Zoning District Map E-69D for presentation to City Council;
- (d) That the proposed change in zoning is in conformity with the Official Plan for the Hamilton Planning Area.

NOTE: The purpose of the By-law is to provide a further modification to the "M-13" (Prestige Industrial) District provisions applicable to property at 81 Dartnall Road.

The effect of the By-law is to permit the expansion of the existing building and the following additional uses:

- (a) installation and wiring of trailer hitches;
- (b) assembly of light utility automobile trailers;

In addition the By-law provides for the following variances as special requirements:

- (a) a reduction in the width of the required landscaped area abutting the full length of the northerly side lot line from 13.5m to 6.0m;
- (b) to permit a minimum southerly side yard of 5.0m, whereas 5.18m is required;
- (c) to permit a minimum rear yard of 1.0m for the expansion of the existing building, whereas 7.5m is required;
- (d) to delete the required 7.5m wide planting strip where it abuts the "A" (Conservation, Open Space, Park and Recreation) District adjoining the rear property line.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 February 16 respecting Zoning Application 88-112, for property at the north-west corner of Upper Wentworth Street and Rymal Road East. The staff recommendation recommends approval of this application.

ZA 88-112 -  
north-west corner of  
Upper Wentworth  
and Rymal Road  
East.

The circularization was reported as follows:

17 notices sent      1 in favour      2 opposed

The Committee was in receipt of a Letter of Submission from Mr. John O. Grottenberg, 389 Rymal Road East in opposition to this application.

The Committee was also in receipt of a Letter of Submission from Mr. & Mrs. Forsyth, 379 Rymal Road East indicating that they are partially opposed to the application.

Mr. Parente, Solicitor for the applicant was in attendance and spoke to the Committee on this matter.

Following considerable discussion on this by the Committee, the Committee agreed to DENY this application as it is considered inappropriate for the development of the subject lands.

There being no further business, the meeting then adjourned.

Adjournment.

Taken as read and approved,

ALDERMAN J. SMITH, CHAIRMAN  
PLANNING AND DEVELOPMENT COMMITTEE

Susan K. Reeder  
Secretary  
1989 March 1





FOR ACTION

2.

REPORT TO: The Planning and Development Committee

FROM: P. Kuppe, Building Commissioner

DATE: March 8, 1989

COMM. FILE:

DEPT. FILE:

SUBJECT:


Demolition

RECOMMENDATION:

That the Building Commissioner be authorized to issue a demolition permit for the following property: -

A. 82 Colbourne Street

FINANCIAL IMPLICATIONS: N/A

A handwritten signature in dark ink, appearing to be 'W. G.', with a long horizontal line extending to the right.

BACKGROUND:


For background information see attached sheets.



## DEMOLITION CONTROL

**CATEGORY "A" - PROPOSED USE OF LAND IS PERMITTED BY PRESENT ZONING**

ITEM	ADDRESS	PRESENT USE	PROPOSED USE	LOT SIZE	OWNER	ZONE	RECOMMENDATION
A.	82 Colbourne St.	SFD	SFD	30.00' x 83.83'	Celestino De Almeida	"D"	It is recommended that the Committee approve demolition.

  
 P.C. Lampman, P. Eng.,  
 Manager/Plan Examination

# MEMORANDUM • CITY OF HAMILTON

3.

TO : Alderman J. Smith, Chairman &  
Members, Planning & Development  
Committee

FROM : Mrs. Susan K. Reeder, Secretary  
Planning and Development Committee

YOUR FILE:

OUR FILE :

SUBJECT : Review of Functions Building

DATE : 1989 March 9

The above-referenced matter is placed before the Planning and Development Committee for discussion, in accordance with the direction of the Committee during budget deliberations on 1989 February 22nd.

SKR:lw







CITY COUNCIL  
HAMILTON, CANADA

4.  
Alderman Vince Agro  
Chairman — Legislation  
Committee

71 MAIN STREET WEST L8N 3T4 • (416) 526-2733 • RES. (416) 528-2009 — WARD 2

February 23, 1989

Ms. S. Reeder, Secretary  
Planning & Development Committee

Dear Ms. Reeder:

Please place the following matter on the agenda of the next Planning & Development Committee so that both Alderman McCulloch and I can represent a delegation from the Corktown/Stinson Neighbourhood.

The matter deals with improvements to Carter Park in that neighbourhood-improvements which total approximately \$225,000.00. The Citizens' Committee has been informed that there is only \$125,000.00 left in the PRIDE programme.

It is our desire that all of the proposed improvements be undertaken. It is for this reason we wish to appear before the Committee.

I have already spoken to Alderman McCulloch about this matter and he is in full agreement.

Please advise me in writing when this will be on the agenda so that I can inform the Citizens' Committee.

Sincerely,

Vince Agro  
Alderman, Ward 2

VJA:sn

c.c. Alderman Wm. McCulloch  
Ms. J. McNeilly, Community Development Department  
Members, Corktown/Stinson Neighbourhood Citizens' Committee





FOR INFORMATION

4a.

REPORT TO: Mrs. S. K. Reeder  
Secretary, Planning and Development Committee

FROM: Mr. E. W. Kowalski  
Director

DATE: 1989 March 9  
COMM FILE:  
DEPT FILE: 800-0606

SUBJECT: Corktown Stinson Ontario Neighbourhood Improvement  
Programme (O.N.I.P.);  
Design & Implementation of Carter Park

BACKGROUND:

For the information of the Planning and Development Committee Members, the following will provide a brief summary of implementation of the Corktown Stinson O.N.I.P.

On 1986 June 17, the City of Hamilton was awarded four hundred and fifty thousand dollars (\$450,000.) by the Ministry of Municipal Affairs for the O.N.I.P. in the Corktown Stinson Neighbourhoods with the City's share of four hundred and fifty thousand dollars (\$450,000.), for a total of nine hundred thousand dollars (\$900,000.). Originally, an application had been made by the City of Hamilton for five hundred thousand dollars (\$500,000.), for a total of one million dollars (\$1,000,000.) for total project costs.

A Citizen's Advisory Committee was established, public meetings held and the area was designated as a Community Improvement Project Area as adopted by By-law.

Concept plans for the five park sites and landscaping of the recreation centre in the Neighbourhoods were reviewed by the Citizen's Advisory Committee, staff and the public prior to Council approval on 1987 September 01.

In October of the same year, tenders were received for five of the six sites. Since the prices were so high, the City of Hamilton, with approval of the Ministry of Municipal Affairs, Community Renewal Branch, retendered this project in the spring.

Separate tender packages for each of the major elements were prepared by the Consultant. From 1988 March to May, bids on three separate packages were received with lower prices but even so, all of these put a strain on the nine hundred thousand dollar (\$900,000.) budget.



Once Council approval was received, construction on each started. (See attached Schedule 'A' which provides an outline of expended and committed dollars to date).

The Department of Community Development and F. Basciano, Landscape Architect have, since that time, have been working with representatives of the Citizen's Advisory Committee and the Ward Aldermen and, subsequently, the Architect has prepared a conceptual plan of the Priority One Park (Carter Park) with all of the elements requested. The total estimated expenditure necessary to implement same is two hundred and twenty-five thousand dollars (\$225,000.) not including contingencies. Funds remaining to implement the park, however, are only one hundred and ten thousand dollars (\$110,000.) to one hundred and twenty thousand dollars (\$120,000.). Therefore, if the park is to be developed as requested by the citizens then an additional one hundred and twenty-eight thousand dollars (\$128,000.) is required.

cc: Mr. A. Schimmel, Director  
Culture and Recreation Department

Mr. J. Pavelka, Director  
Public Works Department

Mr. B. Prowse, Secretary  
Parks and Recreation Committee

<u>Item</u>	<u>Contractor</u>	<u>Status</u>	<u>Amount</u>
Phase A - Noise Barrier	Royal Fence	complete	\$ 35,000.
Phase B - Central Memorial driveway access	Associated Paving	complete	76,000.
Phase C - Parks			
Hunter/East Avenue	Peinster McLean	complete	47,180.
Wolverton	Peinster McLean	complete	148,850.
Central Memorial	Peinster McLean	complete	79,963.
Fencing, Landscaping			
Corktown North	Delmar	complete	73,730.
Corktown South	Delmar	1989	137,130.
Frank Basciano Landscape Architect	---	Fees	70,000.
Fire Hydrant - Removal	Public Works	1988	7,500.
Administration (Salaries, copying etc. - 10% of Provincial Allocations established by the Ministry of Municipal Affairs)	--	--	45,000.
Electrical, Lighting (All parks)	--	1988	30,000.
Surveys (Topographical)	--	--	5,000.
Play Equipment-Wolverton	Paris Playground Inc.	complete	7,825.
Corktown South	"	complete	5,576.
Hunter/East Avenue	Belair Rec. Prods.	complete	6,200.
Frost Fence for Corktown Park North	--	1989	<u>5,000.</u>
			\$779,954.
Total Allocation			<u>\$900,000.</u>
Remaining for Carter Park	--	1989	\$120,046.
Estimate Prepared by Consultant plus 10% contingency	--	--	<u>\$247,500.</u>
Overage	--	--	\$127,454.





FOR ACTION

5.

REPORT TO: Mrs. S. K. Reeder  
Secretary, Planning and Development Committee

FROM: Mr. E. W. Kowalski  
Director

DATE: 1989 March 7  
COMM FILE:  
DEPT FILE: 800-0014.8

SUBJECT: Jamesville Business Improvement Area (B.I.A.)  
Proposed Budget and Schedule of Payments

RECOMMENDATION:

- 1) That, the 1989 operating budget of the Jamesville B.I.A be approved in the amount of twenty-nine thousand six hundred and twenty dollars (\$29,620.); and,
- 2) That, the City Solicitor be hereby authorized and directed to prepare the requisite By-law pursuant to Section 217, the Municipal Act,, R.S.O., 1980, to levy the 1989 Budget as reference in (1) above; and,
- 3) That, the schedule of payments for 1989 be as follows:

15,000. May 01  
7,620. August  
7,000. November

*E. Kowalski*

FINANCIAL IMPLICATIONS: (IF NONE, STATE N/A)

N/A

BACKGROUND:

At a general meeting held 1989 March 01, the Jamesville B.I.A. adopted a budget of twenty-nine thousand, six hundred and twenty dollars (\$29,620.) which includes three thousand dollars (\$3,000.) for winter banners and ten percent (10%) for uncollectible levies.

cc: K. Rouff, City Solicitor  
City Solicitor's Department

E. Matthews, Treasurer  
Treasury Department

ATTENTION: D. Goodman, Assistant Supervisor Business Tax  
Treasury Department

R. Prowse, Secretary of Finance Committee  
City Clerk's Department



FOR ACTION

6.

REPORT TO: Mrs. S. K. Reeder  
Secretary, Planning and Development Committee

FROM: Mr. E. W. Kowalski  
Director

DATE: 1989 March 3  
COMM FILE:  
DEPT FILE: 800-0014.6

SUBJECT: International Village Business Improvement Area  
(B.I.A.); New Member to the Board of Management  
1989-1991

RECOMMENDATION:

- 1) That, By-law #87-229 amending By-law #86-212 appointing the International Village B.I.A. Board of Management be amended to add the following name:

Danny Phillips                      Phillips Printing  
318 King Street East

- 2) That, the City Solicitor be authorized and directed to amend By-law #87-229 pursuant to (1) above.

*E. Kowalski*

FINANCIAL IMPLICATIONS: (IF NONE, STATE N/A)

N/A

BACKGROUND:

As stated in Section 217, Sub Section 6, 7, 8 of the Municipal Act:

- 6) "A Board of Management ..... is a body corporate and shall consist of such a number of members appointed by Council."
- 7) "A Board of Management ..... each member shall hold office from the time of his appointment until the expiration of the term of the Council that appointed him."
- 8) "A Board of Management ..... where a vacancy occurs from any cause, the Council shall appoint a person qualified."

The International Village Board of Management passed a MOTION, at their 1989 February 13 Board Meeting to elect a new Board Member.





FOR ACTION

7.

REPORT TO: Mrs. S. K. Reeder  
Secretary, Planning and Development Committee

FROM: Mr. E. W. Kowalski  
Director

DATE: 1989 March 8  
COMM FILE:  
DEPT FILE: 800-0320

SUBJECT:

Provincial/Municipal Housing Agreement

RECOMMENDATION:

That the Director of Community Development be hereby authorized to enter into negotiations with the Ministry of Housing, with the aim of establishing a Provincial/Municipal Housing Agreement. The contents of the proposed Agreement to be presented to the Planning and Development Committee and City Council prior to submission to the Province of Ontario.

FINANCIAL IMPLICATIONS: (IF NONE, STATE N/A)

None at this time.

BACKGROUND:

At the meeting of the Planning and Development Committee held 1988 October 12 a report was tabled authorizing the Department of Community Development to enter into negotiations with the Province of Ontario for a Provincial/Municipal Housing Agreement.

On 1989 March 01 a meeting was held in the Mayor's office with the Mayor, Alderman D. Ross (Executive Committee of the Municipal Non-Profit (Hamilton) Housing Corporation, Board of Directors), the Honourable C. Hisek as well as Municipal and Provincial staff. The purpose of the meeting was to hear the Provincial commitment to the Municipal Non-Profit (Hamilton) Housing Corporation of 300 units under the "Homes Now" Programme and a brief discussion on the possibility of a Provincial/Municipal Housing Agreement. The discussion was well received and the Minister agreed that discussions should continue with an Agreement to be reached in approximately 90 days. The implementation period would be three or four years. A "wish list" which will be the basis of negotiations is attached.

It should be noted that similar Agreements have been signed with the City of Ottawa (90 million dollars), City of Peterborough (27 million dollars) and the City of Toronto (1.2 billion dollars). As a result of these actions there appears to be an unprecedented opportunity and funds for the development of local affordable housing actions. The City of Hamilton should ensure that the City receives its fair share of this special funding opportunity.

As Provincial/Housing Agreements are tied to the provisions of affordable housing and housing programmes, it is proposed that the Community Development Department continue to act as the Co-ordinators for such an Agreement. In addition, the following Departments are expected to provide input into such an Agreement.

- Planning and Development
- Property Department
- Engineering
- Treasury
- Building

Further input should be sought from sources outside City Hall as well as including the Coalition of Social Housing Providers, Local Home Builders and other interested parties.

Attach.



## SYNOPSIS

### Provincial/Municipal Housing Agreement

#### SUGGESTED ITEMS FOR NEGOTIATION

- |   |  |
|---|--|
| SPECIAL PROJECTS                          | - Major Affordable Housing Projects, including Non-Profit, Affordable and Rental and Ownership Units.            |
| MAXIMUM UNIT PRICE                        | - A review of maximum unit prices, as they pertain to the City of Hamilton.                                      |
| RESERVE ALLOCATIONS                       | - Allocation of bulk Non-Profit Housing units should be made for the City of Hamilton.                           |
| FUNDING FOR INFRASTRUCTURE                | - Special Infrastructure Programmes for affordable housing projects.   |
| TARGET MIX REVIEW                         | - Review of target mix requirements under the Non-Profit Programme including, banding within Deep Core Category. |
| SENIOR PROJECTS                           | - Ministry support for senior projects within the City of Hamilton.  |
| LAND FOR NON-PROFIT                       | - A Programme financially sponsored by the Province to allow the City to land-bank for non-profits.              |
| SPECIAL STUDIES                           | - Funding for housing related studies, to encourage Affordable Housing.  |
| EMERGENCY LOAN PROGRAMME                  | - An emergency loan programme to address immediate homeowner needs.  |
| CONVERT-TO-RENT                           | - A supplement to existing Provincial Programme, to enhance funding for Convert-To-Rent.                         |
| ONTARIO HOME RENEWAL PROGRAMME - DISABLED | - Specific allocation for the City of Hamilton.  |
| HOUSING SERVICE                           | - Funding for Community based housing agency, to provide information on all available housing programmes.        |
| INTENSIFICATION                           | - Funding for demonstration programme in specific areas of municipalities where intensification is possible.     |
| COMPUTERIZATION                           | - Provincial Grant money for computerizing local housing services.   |



FOR ACTION

8.

REPORT TO: Mrs. S. K. Reeder  
Secretary, Planning and Development Committee

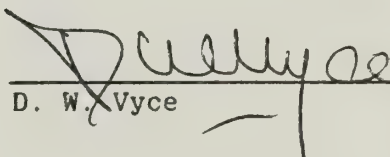
FROM: Mr. D. W. Vyce  
Director of Property

DATE: 1989 March 1  
COMM FILE:  
DEPT FILE: 100.11.102  
(4505)

SUBJECT: 393 Sherman Avenue North - Alpha Enclave (West)

RECOMMENDATION:

- (a) That the residential property located at 393 Sherman Avenue North in the Alpha Enclave (West) which was approved for acquisition by City Council on July 28, 1987 be acquired through expropriation and that the City Solicitor be directed to take the appropriate action required.
- (b) That the City Clerk be authorized and directed to:
  - (i) Give Notice of the City's application as Expropriating Authority, to all owners, registered owners and tenants (as defined in The Expropriations Act) of the above residential property in the Alpha Enclave (West) that is located within an industrial zone, for approval to expropriate in accordance with Section 34(8) of The Planning Act,
  - (ii) advertise Notice of the City's Application in a newspaper as required by The Expropriations Act, and
  - (iii) sign and receive the said Application for Approval to Expropriate.
- (c) All related costs to the acquisition and expropriation be charged to Account CF 5590 308750001.

  
D. W. Vyce

FINANCIAL IMPLICATIONS: (IF NONE, STATE N/A)

There will be revenue generated by the disposal of the assembled lands. The amount is not known at this time.



BACKGROUND:

City Council on November 8, 1988 in adopting Item #4 of the 22nd Report of the Planning & Development Committee, approved the expropriation of all the remaining residential properties required for the Alpha Enclave (West) project.

On November 16, 1988 we forwarded a negotiated Option to Purchase document covering the purchase of 393 Sherman Avenue North to City Council for approval. City Council on December 13, 1988 approved the purchase of same in adopting Item #4 of the First Report of the Planning & Development Committee. Due to title problems, the City Solicitor was unable to complete the purchase of 393 Sherman Avenue North as scheduled on February 8, 1988. The current owner is unable to give the City clear title.

In view of the above, the only method open to the City to acquire this property would be through expropriation.

c.c. Mr. K. A. Rouff, City Solicitor  
Attention: Mr. B. Loreto

c.c. Mr. E. C. Matthews, City Treasurer

c.c. Mr. M. Chidley, Regional Surveyor

c.c. Alderman B. Hinkley, Ward 3

c.c. Alderman D. Drury, Ward 3

9.

FOR ACTION

REPORT TO: Mrs. S. K. Reeder  
Secretary, Planning and Development Committee

FROM: Mr. Lou Sage  
Chief Administrative Officer

DATE: 1989 March 10  
DEPT FILE: 409-0001

SUBJECT: Sheraton Hotel

RECOMMENDATION:

That the firm of Weir & Foulds be retained to assist D. Powers of the Legal Department in the completion of documentation necessary to finalize the transaction between Lakeview Development Limited and GGS Co. Limited as it pertains to the City of Hamilton's interest in this matter.

FINANCIAL IMPLICATIONS: (IF NONE, STATE N/A)

The expenditure will be monitored by D. Powers of the Legal Department and be charged to Account CH55311 80010 "Consultant's Fees - Other".

BACKGROUND:

As you know we have been requested by the parties to the sale of the Sheraton Hotel to approve the transaction in accordance with the agreements between the City of Hamilton and Lakeview Development Limited. The completion of necessary legal work is so voluminous that it is beyond the resources of the Legal Department at this time.

The City Solicitor agrees with this course of action. The work is beginning immediately in order to ensure that the transaction is not delayed beyond the current closing date for the sale.

cc Mr. K. Rouff  
Mr. E. Matthews





FOR ACTION

10.

REPORT TO: Chairman and Members  
Planning and Development Committee  
Attention: Mrs. S. K. Reeder, Secretary

FROM: Mr. K. A. Rouff  
City Solicitor

DATE: 1989 February 27  
COMM FILE:  
DEPT FILE: 55-38.23

SUBJECT: Settlement of Expropriation of 14 Market Square  
DIKER, Rhona and BARNETT, Barbara, former owners

RECOMMENDATION:

That the City pay the sum of \$40,000.00 plus interest plus legal costs to settle the expropriation of 14 Market Square.

"K.A. Rouff" per: P. Hester  
K. A. Rouff  
City Solicitor

FINANCIAL IMPLICATIONS: (IF NONE, STATE N/A)

Payment of \$40,000.00 plus interest from December 31, 1968, plus legal costs.

BACKGROUND:

This matter arises out of the City of Hamilton's expropriation of 14 Market Square in 1968. The City's legal consultant at Weir and Foulds has negotiated a settlement of the market value for this expropriation with the former owner's lawyer for (a) \$65,000.00 minus the \$25,000.00 paid when the expropriation plan was registered, (b) interest at the rate of 6% from December 31, 1968, (c) plus reasonable legal costs.

The Expropriations Act allows the former owner interest from the date of expropriation plus reasonable legal expenses.

The City's legal consultant has approved of this settlement.

LEF:cls  
Attach.

c.c. Mr. E. C. Matthews  
City Treasurer

c.c. Mr. D. W. Vyce, Director  
Real Estate

FOR ACTION

REPORT TO: Mrs. S. Reeder, Secretary  
Planning and Development Committee

FROM: Miss C. Coutts, Secretary  
Local Architectural Conservation  
Advisory Committee

DATE: 1989 February 23  
COMM FILE:  
DEPT FILE:

SUBJECT: HERITAGE PERMIT FOR ALTERATIONS TO  
252, 262 AND 268 JAMES STREET SOUTH

RECOMMENDATION:

That a Heritage Permit application be approved for alterations proposed for the designated properties at 252, 262 and 268 James Street South, as marked on the plans submitted by Moffat, Kinoshita Associates Incorporated, dated 1989 February 2.

FINANCIAL IMPLICATIONS: (IF NONE, STATE N/A)

N/A

BACKGROUND:

The Local Architectural Conservation Advisory Committee at its meeting held 1989 February 13, met with Mr. Jerry Chlebowski of Moffat, Kinoshita Associates Incorporated and gave preliminary approval on the plans for the proposed alterations for these designated properties.

For properties designated under the Ontario Heritage Act, proposed alterations to designated features require Council approval. Presently, only the east, north and south facades are designated, and the interior hallway of 252 James Street South.

This new proposal consists only of an adaptive re-use project, converting residential buildings to a commercial use. The former in-fill project has been discontinued and as a result, the new design causes minimal intervention with the exterior views.

Photographs and the necessary Planning information are attached.

Attached



## HAMILTON LACAC -- HERITAGE RESEARCH FORM

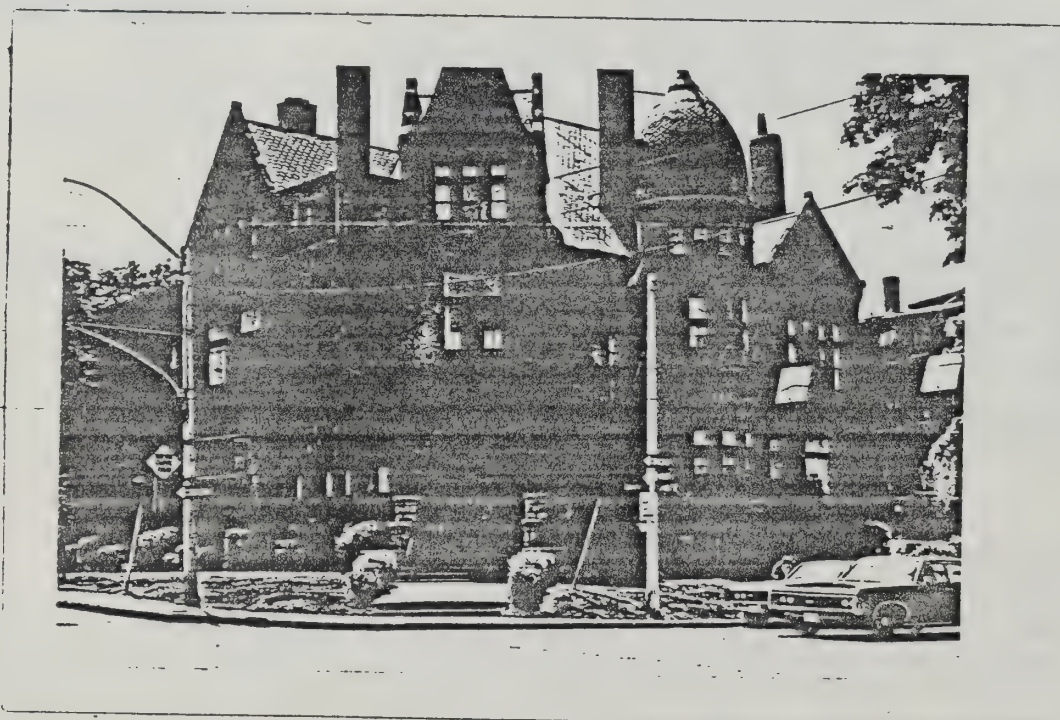
Date: Nov. 1985

Name(s) and Address of Property: Henson Manor Apartments (formerly  
the Hendrie House)  
252 James St. South

Present Owner(s): Sam Henson Apartments Ltd.

Present Occupant(s): See current assessment.

Present Use: Apartments (23 units); part of ground floor recently  
converted to architect's offices.



Date of Construction: 1891-92

Architect and/or Builder: William A. Edwards, architect  
Samuel Henson, builder responsible for 1937 conversion to apartments.

Original Owner(s): Tunis B. Griffith

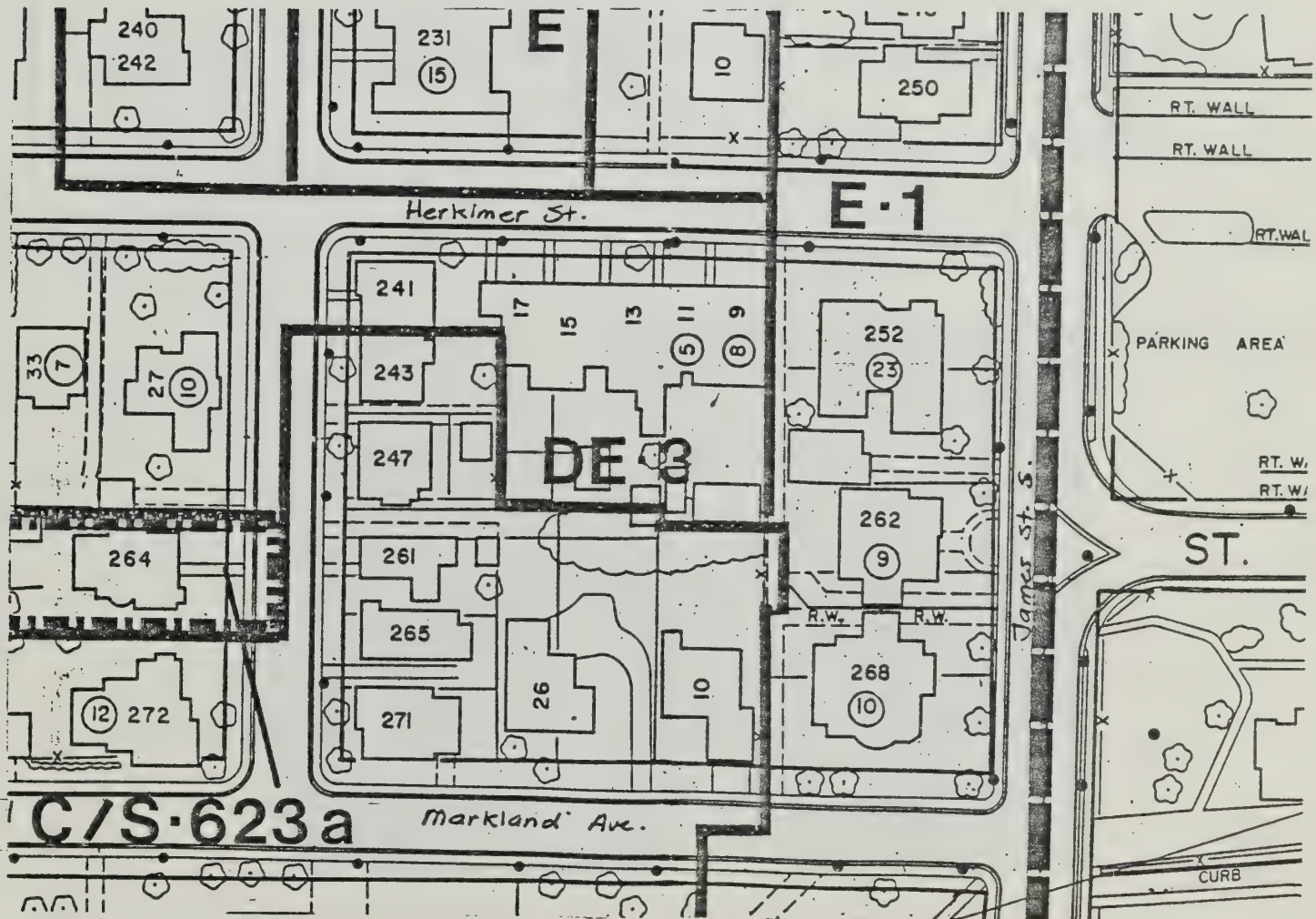
Original Occupant(s): Tunis B. Griffith and family

Plan and Lot Number: Plan 1270. Lots 64 and 65; part lot 66.

Heritage Status: listed; to be designated.

## CURRENT INFORMATION ON SITE AND BUILDING

Map: Block bounded by James, Herkimer, MacNab and Markland Sts. Durand Zoning, June 1985 (City of Hamilton, Neighbourhood Maps, p. 41).



Zoning: E-1 (multiple dwellings): max. floor area = 1.7 x area of lot;  
max. height = 12 storeys.

- in process of being rezoned for mixed commercial and residential use (general or medical offices and multiple dwellings); most of the historic residences on James St. South already converted to such uses.

Context: One of three large Victorian mansions on James St. South in the block between Herkimer and Markland (252, 262 and 268), all owned by Sam Henson Apartments Ltd.; located at southern limit of a major historic streetscape.

Building Frontage: 120 ft

Assessment:

\$44,500



Date:

HAMILTON LACAC -- HERITAGE RESEARCH

Name(s) and Address of Property: 262 James St. South

Henson Manor Wing Apartments

Present Owner(s): Sam Henson Apts Ltd.

Present Occupant(s): See 1984 Assessment.

Present Use: Apartments (9 units)



Date of Construction: 1892-93

Architect and/or Builder: unknown

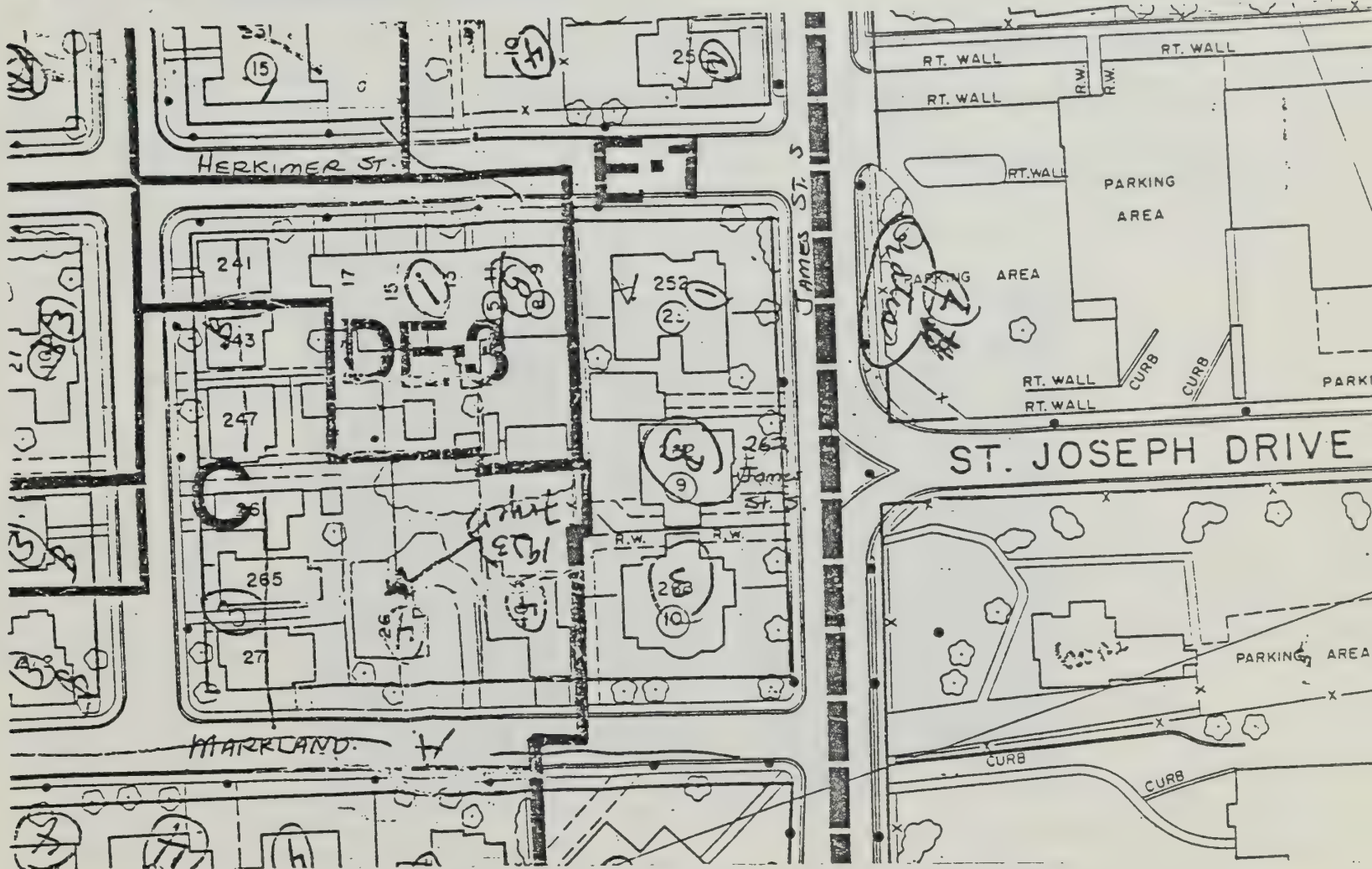
Original Owner(s): Henry P. Coburn

Original Occupant(s): same

LACAC Photographs:

CURRENT INFORMATION ON SITE AND BUILDING

Map: Site Plan



Plan and Lot Numbers: Plan 1270. Part lots 66 and 67.

Zoning: E-1 (multiple dwelling)

Building Frontage: 70 ft

Building Assessment: \$21,700

Heritage Status: listed in Inventory.

Context:



## HAMILTON LACAC -- HERITAGE RESEARCH FORM

Date: Nov. 1985

Name(s) and Address of Property: Henson Manor Annex.  
268 James St. South

Present Owner(s): Sam Henson Apts Ltd.

Present Occupant(s): See current assessment.

Present Use: Apartments



Date of Construction: 1894-95

Architect and/or Builder: James Balfour, architect  
Samuel Henson, builder responsible for conversion to apartments.

Original Owner(s): Charles M. Counsell

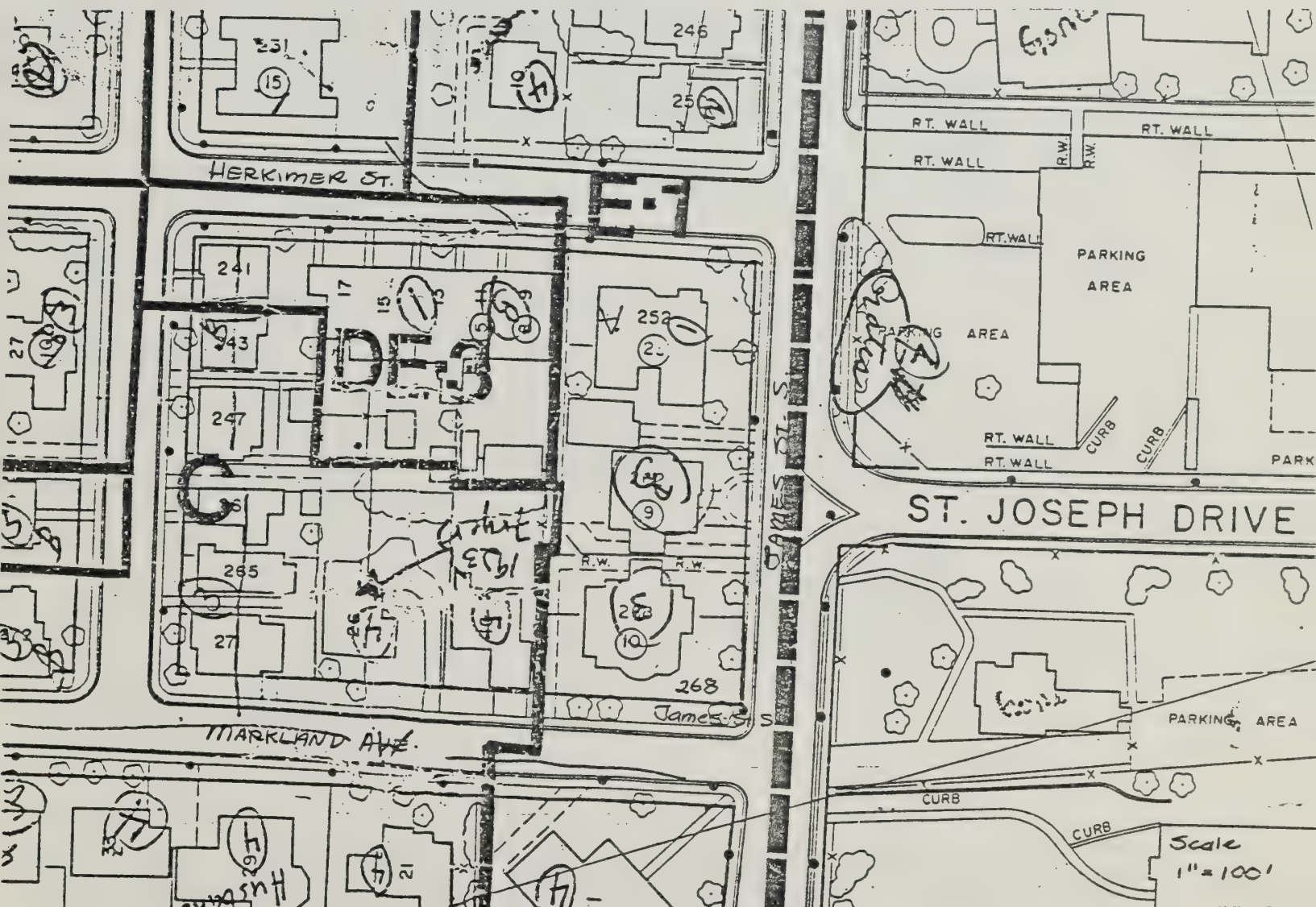
Original Occupant(s): Charles M. Counsell and wife.

Plan and Lot Number: Plan 1270. Lot 68; part lots 66 and 67.

Heritage Status: listed; to be designated

## CURRENT INFORMATION ON SITE AND BUILDING

Map: Block bounded by James, Herkimer, MacNab and Markland Sts.  
Durand Zoning, June 1985 (City of Hamilton, Neighbourhood  
Maps, p. 41.)



Zoning: E-1 (multiple dwellings).  
See file on 252 James St. South for explanation.

Context: See file on 252 James St. South.

Building Frontage: 91.66 ft

Assessment: \$24,500





12a.

F O R   A C T I O N

REPORT TO:    MRS. S. K. REEDER, SECRETARY  
                  PLANNING AND DEVELOPMENT COMMITTEE

FROM:         G. S. SPENCER,  
                  COMMISSIONER OF ENGINEERING

DATE: 1989 March 6  
COMM FILE:  
DEPT FILE: S726-49  
ID#0043D (40)


SUBJECT:

~~MAR~~ 8 1989

St. Elizabeth Village Open Storm Water Channel

RECOMMENDATION

The St. Elizabeth Society be required to deed to the City the land required for storm sewer channels and the City lease back to the Society surface rights for landscaping and access purposes and the Mayor and City Clerk be authorized to execute the agreements.

  
\_\_\_\_\_  
G. S. Spencer  
Commissioner of Engineering

FINANCIAL IMPLICATIONS

N/A

BACKGROUND

On March 1, 1989, Committee heard a delegation from the St. Elizabeth Society concerning the requirements for an open channel across the Society's land, and instructed staff to submit a report to Committee on March 15.

ANALYSIS

The Society is proposing to construct a residential development on certain lands south of Rymal Road east of the existing St. Elizabeth Village. This development requires the approval of a site plan by the City of Hamilton. Approval of the site plan has been in progress since 1986 because of an understanding with that the land owner would convey to the City of Hamilton a "flood plain easement", which was meant to be a contract under which the City and the Region

Cont'd ...

-page 2-  
March 7, 1989

St. Elizabeth Village Open Storm Water Channel

Cont'd ...

would have the right to increase the peak run-off rates across the Society's lands. The City's Legal Department and the Society's solicitors advised your committee on March 1, 1989, that there is no legal basis to implement the above proposal.

The area under discussion is an open storm water channel which crosses from west to east across the existing and proposed residential development. The "channel" is actually Twenty Mile Creek. The improvements on the land have been designed and partly constructed to provide for new development upstream from the site. The upstream development plans already approved by the City do not provide for any run-off attenuation because retention ponds were built on the Society's lands in accordance with the original site plan approval. For this and other reasons, it would be difficult to design all upstream developments with zero-increase run-off for peak-conditions.

With the Legal Department advising Committee that the originally proposed contracts are not feasible, the City appears to have two alternatives:

- acquire the land; or
- rely on riparian rights and other provisions of law and release the site plan without conditions.

The first course of action is that commonly adopted in the City of Hamilton and is preferred by the Department of Engineering. This option is not considered acceptable to the land owner.

The second option, releasing the site plan with no conditions, will not result in immediate difficulties but could lead to future difficulties with the land owners, because it is not practically possible for the City and the Region to keep run-off to a zero increase in peak flow conditions at this location as development occurs upstream.

 KAB:nh

cc: P. Barkwell  
Legal Department

12b.

Terence A. Whelan, Q.C.

BARRISTER, SOLICITOR AND NOTARY PUBLIC

Suite 403, 393 Rymal Road West, Hamilton, Ontario L9B 1V2 • Telephone (416) 383-6381

FAX: 574-6161

March 1st, 1989

To The Members of the Planning and Development Committee

I have read the memo of Mr. Peter Barkwell (copy attached) of the City Solicitor's Office to Mr. G. S. Spencer, Commissioner, Regional Engineering, and agree with Mr. Barkwell's conclusions. I have also reviewed the provisions of City of Hamilton By-law No. 80-245, referred to in Mr. Barkwell's memorandum, Section 7 (1) of which reads as follows:

"No person shall obstruct any drain or watercourse or allow the obstruction of the drain or watercourse or maintain any obstruction of the watercourse."

Section 12 of the By-law provides for a fine of up to \$1,000 for any contravention.

If the ownership of the watercourses in St. Elizabeth Village were transferred to the City of Hamilton, the St. Elizabeth Home Society would be relieved of any responsibility for their maintenance and in the event of any flooding, the City could conceivably be held liable, rather than the Society.

Please note (see attached letter from Parker Consultants dated February 28th, 1989) that the pond and culvert capacities in the St. Elizabeth Village East Extension have been designed to pass the 100 year storm before flooding. In addition, the road elevations at or adjacent to the culverts have been located below the lower floor levels of any of the housing units in the development. Clearly this provides additional protection against flooding above the 100 year frequency.

My client is quite prepared to give an undertaking to permit the developers of any upstream developments to enter the St. Elizabeth Village properties for the purposes of making any improvements or changes to the watercourses within the Village deemed necessary by the Region or the City at the developers' expense and provided that such developer(s) restore any damage to the landscaping, pavement or structures caused by such changes. It is submitted that this undertaking would



implement Mr. Barkwell's recommendation contained in the last paragraph on page 2 of his memorandum dated February 22nd, 1989.

All of which is respectfully submitted.

TERENCE A. WHELAN, Q.C.,  
Solicitor for the St. Elizabeth  
Home Society (Hamilton, Ontario)

Corporation of the City of Hamilton

Memorandum

ENG. PLAN	1
ENV.	
PL.	
AP.	

\*\*\*\*\*

TO: Mr. G. S. Spencer  
Commissioner, Regional Engineering  
Att: Mr. K. Brenner

FROM: Peter A. Barkwell  
City Solicitor's Office

RE: St. Elizabeth Homes Society  
St. Elizabeth Village East  
Proposed Easement

Our File: 1-5.523

Date: February 22, 1989

The writer has now had an opportunity to review the proposed easement drafted by Mr. Whelan and the appropriate plans.

The indication in your letter of January 11, 1989 is that the "purpose of the easement is to protect the City of Hamilton from claims attributed to the discharge of water onto the Society's lands from urban development permitted and encouraged by the City upstream .....".

The easement as drafted by Mr. Whelan consists of a rather sparsely worded release of the City and Region for claims and damages arising out the discharge of water on to the Society's lands. In your letter of November 23, 1988, you further propose another clause dealing with the maintenance of culverts and open channels on the St. Elizabeth Society's lands.

To deal first with the maintenance of open channels and culverts, this issue is dealt with by City By-law 80-245, Section 7 of that By-law provides that no person shall obstruct any drain or watercourse or allow such obstruction or maintain such an obstruction. The City may serve notice upon the owner of the lands to remove the obstruction failing which, pursuant to Section 10 the City may cause the work to be done and add the expense to the tax roll. Accordingly, there is nothing to be gained by adding such a stipulation into a proposed easement. The power to prevent obstruction of the watercourse is already present.

The second question is more complex. This relates to the rights of the downstream owner with regard to discharge of water onto or across their property. Where there is an established watercourse the downstream owner has two rights:

- (a) The right to continue to receive the water from the upstream area, and
- (b) The right not to have the upstream owner increase the discharge of water such as to cause damage to the downstream owner's lands.

58376281

The case of Scarborough Golf and Country v. City of Scarborough et. al, (1986) 55 O.R.(2nd) 193 (High Court of Justice) is clear authority for the proposition that where a municipality permits upstream development which results in an increase in waterflow which damages the defendants' lands the municipality will be liable. In that case the City had permitted subdivisions to be developed upstream from the golf course and had arranged matters so that the storm sewers from these subdivisions discharged directly into the creek which flowed across the golf course's property. The result was serious erosion and flooding problems created on the golf course. The City was held to be liable.

What the City is now seeking to do is to obtain a release, in advance, from the St. Elizabeth Home Society with respect to possible future problems created by upstream development. Essentially, the City is attempting to impose upon the St. Elizabeth Home Society a voluntary assumption of risk with respect to such upstream developments.

In the case of Crocker v. Sundance Northwest Resorts Limited (1988) 51 D.L.R.(4th) 321 (Supreme Court of Canada) the Court considered the defence of voluntary assumption of risk. The court said :

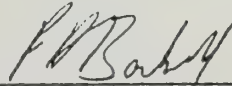
"It only applies in situations where the plaintiff has assumed both the physical and the legal risk involved in the activity.....".

In the instant case, it could certainly be argued that by signing such a release the St. Elizabeth Home Society was assuming the legal risk involved in the situation. However, it is nearly impossible to say that the St. Elizabeth Home Society is assuming the physical risks since there is no evidence as to what those risks might be. For example, at the present time, it is not possible to state whether the risk is a one percent increase in waterflow onto and through the St. Elizabeth Home Society property, or whether the risk is a one thousand percent increase in waterflow. Under the circumstances, and given the Supreme Court's reasoning in the Crocker case, it is not possible to say with certainty that such a release would be upheld. The City would then be exposed to the same risks that the City of Scarborough faced in the Scarborough Golf and Country Club case.

In our view, the proposed easement will not protect the City from the risk of liability for increased water discharge onto the St. Elizabeth Home Society property as a result of upstream development. We would suggest that the proper course of action to take is to evaluate this potential problem as and when the upstream development occurs. The upstream development should then be made contingent upon proper drainage studies and either (a) a system being put in place which will not increase the discharge of water onto the St. Elizabeth Home Society property, or (b) the developer entering into an appropriate agreement with the St. Elizabeth Home Society to either permit or control the increased waterflow onto the St. Elizabeth Home Society property. In this way, the St. Elizabeth Home Society will then be precisely aware as to the water discharge which they are agreeing to permit. At that time, an easement might be appropriate or, remedial work on the St. Elizabeth Home Society property such as channelization of watercourses might be appropriate, such remedial work to be carried out at the expense of the subdivider.



In conclusion, we do not believe that the easement is necessary or appropriate to accomplish the ends which you have set out. By-law 80-245 provides the City with means to prevent or remove any obstruction of an existing watercourse. The easement will not protect the City from its obligations in the future to ensure that upstream development is carried out in a manner which does not result in an increase of water discharge onto the St. Elizabeth Home Society property sufficient to cause damage to the St. Elizabeth Home Society. We would therefore recommend against proceeding with this easement and are not prepared to approve the easement.



---

Peter A. Barkwell  
for K. A. Rouff  
City Solicitor.

PAB;hk

PARKER  
CONSULTANTS

C.C. Parker Consultants Limited  
Consulting Professional Engineers  
1400 Rymal Road East, Hamilton,  
Ontario L0R 1P0 (416) 385-3234  
Fax (416) 385-3534

February 28, 1989

File No. 6030

Mr. Julian Gaspar  
Architect  
Candaplan Group Inc.  
393 Rymal Road W.,  
Hamilton, Ont.  
L9B 1V2

Dear Sir:

Re: Storm Water Management  
St. Elizabeth Village East Extension

The storm water management through the St. Elizabeth East Extension is a continuation of the pond and culvert system installed in the existing St. Elizabeth Village.

The pond and culvert capacities in this extension have been designed to pass a 100 year storm before flooding. In addition to this capability, the road elevations at or adjacent to the culverts have been located below the lower floor levels of any of the housing units in the development, providing a minimum of 1 foot above the road way, for all but two units (where there will be a minimum of 8 inches). This will result in further protection against flooding above the 100 year frequency.

The design of the system is in accordance with the DeLCan South Mountain Master Servicing Study accepted by the Region for the St. Elizabeth East Extension, and which has also been accepted by the Niagara Peninsula Conservation Authority.

Most storm water management systems in developed areas are made up of two components, one comprising of the sewer and/or culvert system, called the minor system and the other comprising the area which will flood after the minor system reaches its designed capacity, called the major system.

The City of Hamilton requires the minor system in a subdivision to be designed according to the City of Hamilton Rainfall curve which approximates a twelve year storm frequency. They require that the major system (made up of the pavement and yard areas) provide a reasonably clear area to outlet, assuming flooding of that area for extreme events.



**PARKER**  
**CONSULTANTS**

Mr. Julian Gaspar

- 2 -


February 28, 1989

In the case of the St. Elizabeth Village East Extension the minor system (the ponds and culverts) is designed for a 100 year storm frequency. The major system provides a reasonably clear area to outlet.

We conclude that the storm water management in this development is very conservatively designed and that the exposure to flooding of any of the units is minimal.

Yours very truly -

PARKER CONSULTANTS



J. W. Disher, P.Eng.  
President

JWD/jd





FOR ACTION

13.

REPORT TO: SUSAN REEDER, SECRETARY  
PLANNING AND DEVELOPMENT COMMITTEE

FROM: J. D. THOMS, COMMISSIONER  
PLANNING AND DEVELOPMENT DEPARTMENT

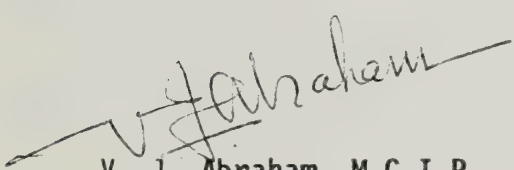
DATE: 1989 March 7th  
COMM FILE:  
DEPT. FILE: P5-2-113

SUBJECT:

Red Hill Expressway - Local Street Network  
Red Hill Neighbourhood.

RECOMMENDATION

That the Planning and Development Department be authorized to hold a joint meeting with the Freeway Project Director.

  
V. J. Abraham, M.C.I.P.  
Director of Local Planning

  
J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development Department

FINANCIAL IMPLICATIONS

No financial implications for holding a public meeting. Proposals as a result of the public meeting will be paid for as part of the Freeway Project.

BACKGROUND

On March 1, 1989, the Freeway Steering Committee authorized a public information meeting to be held by the Freeway Project Director to discuss access to the neighbourhood from the north. The proposed intersection of the Expressway and King Street East does not allow a vehicular link from King Street East to Mount Albion Road. The access to the northern part of Red Hill Neighbourhood needs to be addressed. A full analysis is provided in Appendix 1.

The three alternatives analysed shown on Figure 1 of Appendix 1, are as follows:

- A. Emergency access from King Street East to Mount Albion Road.
- B. A road link from Hixon Road to Pottruff Road.
- C. A road link from Hixon Road to Parkdale Avenue South.

#### CONCLUSION

The neighbourhood plan for Red Hill will need amending for all the alternatives being assessed. The City should, therefore, be involved with the process of choosing the alternative. A public meeting of the Freeway Steering Committee and Planning and Development Committee is needed.

DG:s

WP 0021P





## THE REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH

Mountain East-West and North-South Transportation Corridor  
Project Office  
25 Main St. West - 10th Floor  
Hamilton, Ontario L8P 1H1  
(416) 526-4277

Our File No. 80.01.10

February 27, 1989

MEMO TO: Mr. D. Godley, Manager, Neighbourhood Planning  
Planning and Development Department

FROM: L. Dale Turvey, Project Director  
Freeway Project Office

RE: Trenholme, Albion Falls and Red Hill Neighbourhoods

---

In response to your letter of February 21, 1989, please find attached a copy of the report to be considered by the Freeway Steering Committee on March 1st.

*Mme.*

LDT:dr  
Att'd.



THE REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH

Mountain East-West and North-South Transportation Corridor  
Project Office 526-4277  
25 Main Street West, 10th Floor 529-4523  
Hamilton, Ontario L8P 1H1

Our File No. 80.01.10

I.D. 29

February 15, 1989

Mr. Chairman and Members  
Freeway Steering Committee

Members of the Committee:

Re: North-South Parkway - Local Street Network  
Vincent/Red Hill/Gershome Neighbourhoods (FRE 89-015)

Origin

Under the approved North-South Parkway configuration, Mount Albion Road would terminate at Hixon Road, just south of King Street. At the public information centres held in November, 1988, residents of the Vincent/Red Hill/Gershome Neighbourhoods expressed concern regarding the impact on the present level of accessibility to this area. In response, the Project Office has undertaken an in-depth analysis to address the issues raised. The area of investigation is illustrated in Figure 1.

Analysis

The concerns voiced by the residents focus on the following:

- the elimination of the connection of Mount Albion at King Street will reduce the accessibility of the residents to the abutting arterial street system and result in greater travel times, particularly, for trips destined to the west of the Red Hill/Vincent Neighbourhoods;
- access to the small residential enclave north of the T.H. & B. would be restricted to Mount Albion Road and thereby create difficulty for emergency vehicles created by the level crossing at the T.H. & B.;
- existing public transit routes will require modification and possibly affect the walking distances to transit service and/or increase transit costs to maintain the present level of service; and
- the modification of the local street system will change the traffic circulation patterns and thereby concentrate traffic along certain sections of the road system. Of specific concern is the magnitude of the change in traffic volumes along Greenhill Avenue.

The planned street network within the area is illustrated in Figure 1. Alternatives put forward by the public include the following:

- (a) the extension of Greenhill Avenue westerly across the Red Hill Creek Valley;
- (b) the extension of Lawrence Road easterly to connect with Mount Albion Road in the vicinity of the T.H. & B. crossing;
- (c) the extension of Pottruff Road southerly to connect with Hixon Road;
- (d) the modification of the King Street interchange ramp in the south-east quadrant to allow two-way traffic to existing Mount Albion Road; and
- (e) the extension of Hixon Road westerly across the Red Hill Creek Valley to connect with Hixon Road in the vicinity of Parkdale Avenue; and

During the route location/functional planning phases of the project carried out in the period 1978 to 1980, the current issues being raised were recognized. Most of the options cited by the public were considered. The direction received from Council was to incorporate an allowance in the construction cost estimate based on the extension of Pottruff Road to Hixon Road. The intent was to provide a contingency in the project budget in the event that the detailed investigation indicated that an additional access to the area was necessary.

The rationale for eliminating some of the other alternatives from consideration is outlined below.

#### Extension of Greenhill Avenue

This option was formally removed from further consideration due to the concerns raised by the residents of the Rosedale Neighbourhood regarding the expected increase in traffic on the local street system. In addition, the construction costs would be quite high and create an additional crossing of the Red Hill Creek Valley.

#### Extension of Lawrence Road

This option was formally dropped from further consideration primarily on the basis of the impact on arterial road capacity and high construction costs. Lawrence Road functions as a major link in the east-west arterial system. Eliminating the connection with King Street would reduce its present role in providing traffic relief to King Street for travel between the east area of Hamilton and the core area.



Under the present proposal, Lawrence Road is connected to King Street and the North-South Parkway and thereby strengthens its present function. Similar to Greenhill Avenue, the construction costs are high for this option relative to the costs of the other alternatives available.

#### Modification of King Street Interchange Ramp

This alternative would allow two-way traffic operation over a portion of the N-EW ramp of the King Street Interchange. From a traffic safety viewpoint, this arrangement is not acceptable as it introduces the potential for "wrong way" operation on the North-South Parkway. Experience with similar configurations has concluded this type of interchange layout should be avoided.

Consequently, the analysis provided in this report outlines the impact assessment of the remaining alternatives including a "base" alternative which would provide for emergency access only to the residential area north of the T.H. & B. The investigation compares the alternatives under the assessment factors listed below with the purpose of identifying the magnitude of the impact, who is affected and a measurement of the significance of the impact.

<u>Assessment Factor</u>	<u>Indicator</u>
Neighbourhood Accessibility	<ul style="list-style-type: none"><li>. change in existing travel time</li><li>. percentage of residents within acceptable walking distance of public transit</li><li>. emergency access</li></ul>
Costs	<ul style="list-style-type: none"><li>. estimated construction costs</li><li>. estimated property acquisition costs</li><li>. public transit annual operating costs</li></ul>
Traffic Nuisance	<ul style="list-style-type: none"><li>. number of homes and institutions exposed to an increase in traffic volumes</li></ul>

Each of the alternatives is illustrated in Figure 1 and compared in Table 1 under each of the impact assessment factors. The basis for the estimate of the magnitude of the impact, identification of residents affected and significance of the impact is expanded upon in the remainder of this section of the report.

TABLE 1

SUMMARY OF IMPACT ASSESSMENT  
VINCENT/RED HILL/GERSHOME NEIGHBOURHOODS

<u>Assessment Factor</u>	<u>Alternatives</u>		
	<u>"Base"</u>	<u>"Pottruff"</u>	<u>"Hixon"</u>
Neighbourhood Accessibility			
. travel time	increased	no change from existing	no change from existing
. percentage of residents within acceptable walking distance of public transit	90%	90%	90%
. emergency access	acceptable	preferred	preferred
Costs			
. construction <sup>1</sup>	\$450,000	\$1,000,000	\$2,100,000
. property <sup>2</sup>	--	\$20,000	\$20,000
. public transit	no impact	no impact	no impact
Traffic Nuisance <sup>3</sup>			
. number of homes/ institutions exposed to increase in traffic	nil	30	8

<sup>1</sup> Construction Cost Estimate

"Base" and "Pottruff" includes \$300,000 for Hixon Road pedestrian crossing.

<sup>2</sup> Property cost indicated represents a nominal allowance for minor property acquisition.

<sup>3</sup> The change in traffic volumes along Greenhill Avenue is considered common amongst the alternatives and, therefore, not reflected in the estimated number of homes.

### Neighbourhood Accessibility

The estimate of the additional travel time for auto traffic was based on applying the present traffic distribution characteristics to the various areas of the neighbourhoods. The impact is focused on the 40 homes within the Red Hill Neighbourhood, located north of Albright Road. Terminating Mount Albion Road at Hixon Road does not affect the accessibility of the residents of the Vincent, Gershome Neighbourhoods and residents within the Red Hill Neighbourhood south of Albright Road.

In addition, on further examination, only those trips generated by these residents destined north and west of the Red Hill Creek Valley are materially affected. The travel times associated with trips destined to the south and east of the Red Hill Neighbourhood are not materially affected compared with present travel times.

Based on present travel characteristics, this would affect approximately 65% of the trips and increase travel time in the order of 3 to 5 minutes. The greatest effect is on the residents north of the T.H. & B. The significance of this added travel time should be viewed in relation to the total travel time. Generally, the average trip length is in the order of 15 to 20 minutes. Under the other two alternatives, Hixon Road extension and Pottruff Road extension, present travel times would not be affected.

The impact on transit accessibility was developed in co-operation with the Transportation Department. The impact measurement criteria was based on estimating the percentage of residents within the walking distance standard of 400 m. The review undertaken by the Transportation Department suggests that transit service can be maintained at the present level of service under all alternatives without significant effect on operating costs.

The concern related to emergency access focused on the possible blockage of the T.H. & B. crossing thereby closing access to the residential area north of the railway. Currently, the number of trains using the T.H. & B. ranges between 4 and 6 trains per day. Potentially, the crossing could be obstructed up to 5 minutes.

Emergency access cannot be compromised. Accordingly, all alternatives maintain access for fire, police and rescue vehicles, either by special provision in the interchange ("Base" option) or by roadway extensions. A review of the options by the Fire and Police Departments indicates that the special emergency access provision is acceptable. However, they would prefer either the Hixon or Pottruff extension alternatives.



### Costs

The construction costs were prepared on the basis of current unit rates for roadway and bridge construction. The estimate for the "Base" alternative assumes a widened boulevard/sidewalk arrangement adjacent to the N-EW ramp of the King Street interchange connected into the existing Mount Albion Road right-of-way, just to the north of the T.H. & B. The boulevard construction would allow sufficient width for emergency vehicle access. The estimated additional cost is \$150,000, combined with the Hixon Road pedestrian bridge, brings the total estimated cost for this option to \$450,000.

Under the "Pottruff" alternative, Pottruff Road would be extended as a 2-lane roadway to connect with Hixon road. Hixon Road from Fairridge Road to Mount Albion Road would be upgraded to accommodate transit vehicles. The cost of the pedestrian crossing at Hixon Road is included in the estimated cost of \$1,000,000 for this alternative. Similarly, under the "Hixon" alternative, Hixon Road would be extended across the Valley to connect with existing Hixon Road at Parkdale Avenue. A 2-lane roadway cross-section with sidewalks was assumed.

The property costs provided are a preliminary estimate only and are considered conservative. No homes are required. Under the "Hixon" alternative, a small portion of City-owned property would be required. The former public road allowance, now privately owned at the corner of Hixon Road and Fairridge Road, would be required under the "Pottruff" alternative.

The annual transit operating cost differences are minor as the present route can be modified to provide a similar level of service to the area.

### Traffic Nuisance

This factor recognizes the concern caused by substantial changes in the volume of traffic along local streets with fronting residential development. Figure 2 summarizes the forecast changes in the traffic volumes on the local street system with the freeway in place. The forecast volumes do not assume an additional roadway connection at the north end of the Red Hill Neighbourhood. The impact of implementing the "Pottruff" or "Hixon" alternative is discussed below.

Under the "Hixon" or "Pottruff" alternatives, it is estimated that approximately 2,000 to 3,000 vehicles per day would use these crossings. The present volumes along Hixon Road east and west are minimal, in the order of 200 to 300 vehicles per day. While in absolute terms, the forecast volumes of 2,000 to 3,000 vehicles per day is consistent with local collector streets, it does represent a substantial change from the existing situation.

The changes in traffic volumes in the remainder of the neighbourhood street system is generally independent of the additional access provided at the north end of the Red Hill Neighbourhood. The most significant change will be experienced on the section of Greenhill Avenue between Mount Albion Road and the Parkway. Traffic is forecast to increase from 4,000 vehicles per day to 15,000 vehicles per day. The forecast volume on this section is comparable to the present volumes on Mount Albion Road. Conversely, the existing volumes along Mount Albion Road will drop dramatically by up to 80 percent.

#### Summary of Analysis

The impact of implementing one or the other of the alternatives put forward in this report will be felt predominantly by the small residential enclave located north of the T.H. & B. While there will be some inconvenience to the residents living south of the T.H. & B., when the benefits provided by the Parkway are considered, overall, the accessibility to the remainder of the Region will be improved.

For those residents located north of the T.H. & B., the trade-off focuses on greater accessibility versus the impact of increased traffic volumes along Hixon Road. Accordingly, it would appear appropriate to solicit their opinion prior to the Committee making its decision.

#### Recommendation

1. That the Freeway Project Director be authorized to arrange a public information meeting with the residents of the Red Hill Neighbourhood to obtain the opinion of the residents regarding the access alternatives at the north end of the neighbourhood.

Respectfully submitted,

*L. Dale Turvey*

L. Dale Turvey, P.Eng.  
Project Director

LDT:dr  
Att'd.

c.c. Mr. W. M. Carson, C.A.O.  
c.c. Mr. R. Whynott, Chairman



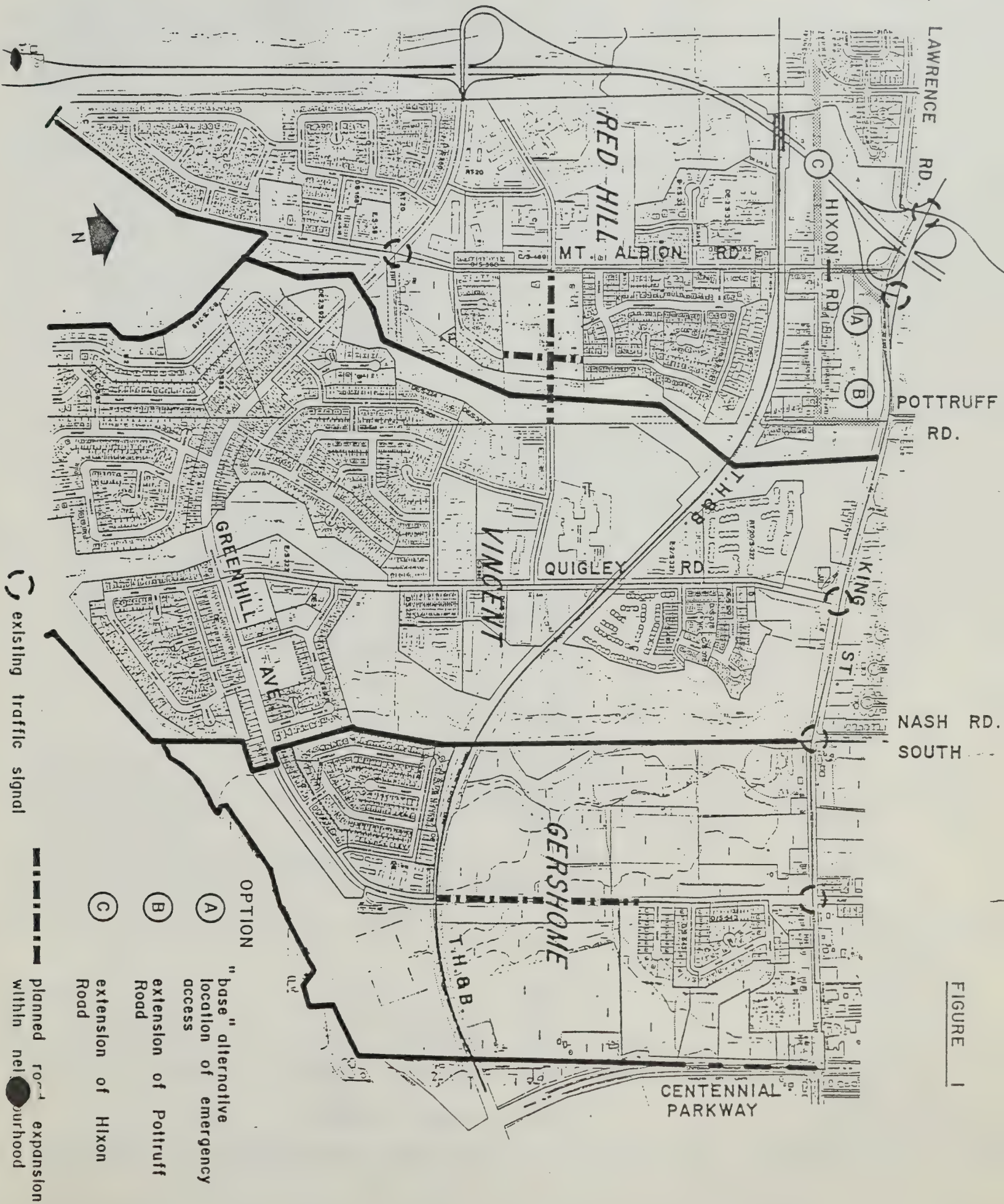
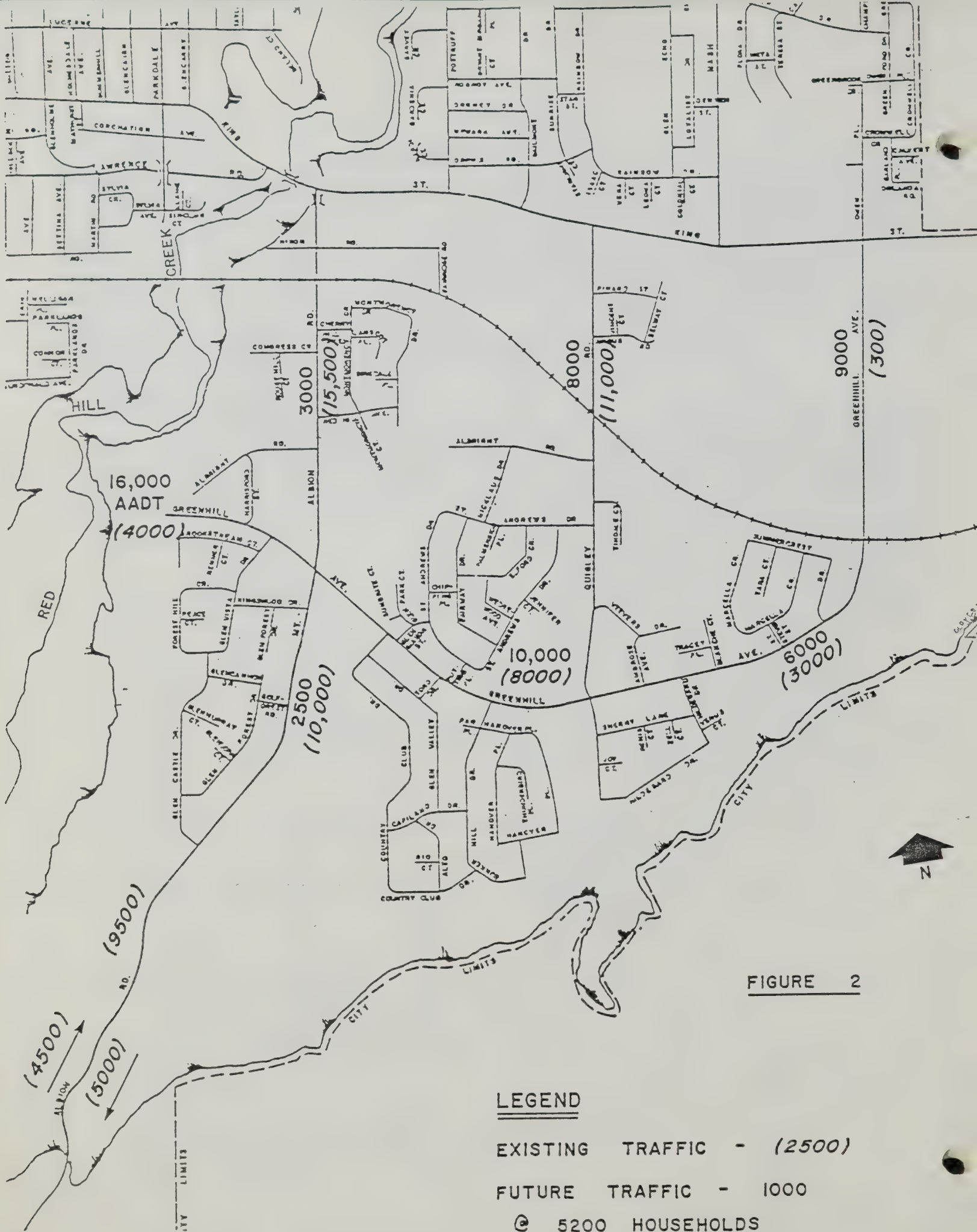
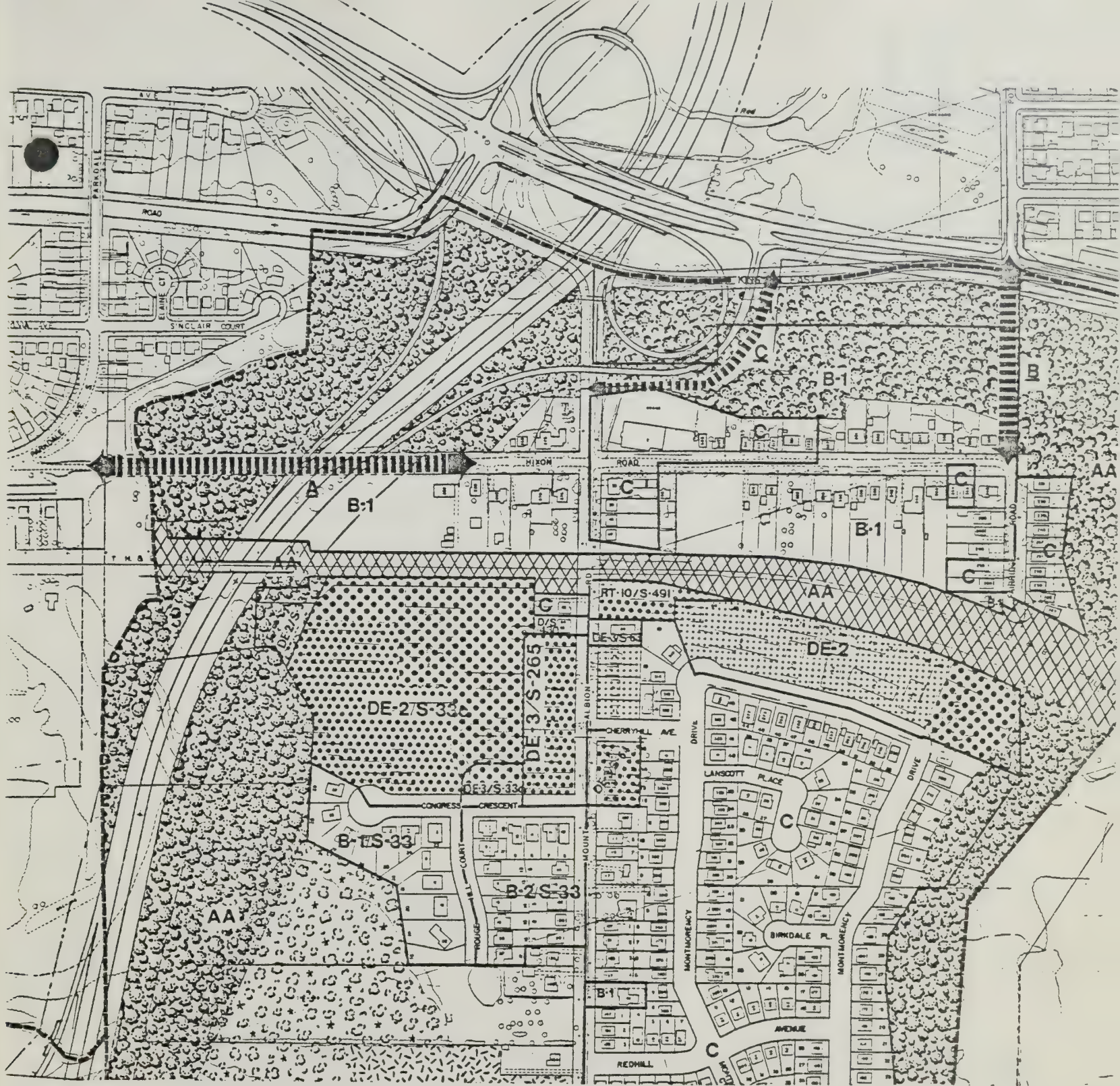


FIGURE 1









City of Hamilton  
Neighbourhood Location

#### LEGEND

- A Hixon Road Extension
- B Porttuff Road Extension
- C Emergency Access Only

#### Land Use

- | Residential               | Non-Residential         |
|---------------------------|-------------------------|
| Single and Double         | Commercial              |
| Attached Housing          | Industrial              |
| Low Density Apartments    | Civic and Institutional |
| Medium Density Apartments | Park and Recreational   |
| High Density Apartments   | Open Space              |
| Commercial and Apartments | Utilities               |

Note: This is a plan only and is subject to change. For details consult the Latest Planning Division of the Regional Municipality of Hamilton-Wentworth.

- |                            |                |
|----------------------------|----------------|
| Neighbourhood Boundary     | Approved:      |
| Zoning Boundary            | Planning Comm. |
| Site Plan Control Boundary | Council        |
| Latest Map Amendment       |                |

**RED HILL**  
APPROVED PLAN



1985 POPULATION 4290

Prepared for the City of Hamilton by the Planning and Development Department  
Regional Municipality of Hamilton-Wentworth





F O R   A C T I O N

14.

REPORT TO:     SUSAN REEDER, SECRETARY  
                  PLANNING AND DEVELOPMENT COMMITTEE

FROM:           ALDERMAN JOHN SMITH  
                  CHAIRPERSON  
                  URBAN DESIGN COMMITTEE

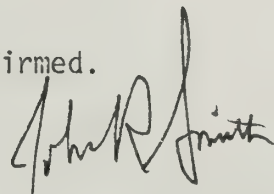
DATE: 1989 March 7th  
COMM FILE:  
DEPT. FILE: P5-4-7-13

SUBJECT:

Reconfirmation of Urban Design Committee

RECOMMENDATION

That the Urban Design Committee be reconfirmed.



Alderman John Smith  
Chairperson  
Urban Design Committee

FINANCIAL IMPLICATIONS

N/A

BACKGROUND

The Urban Design Committee was established by the Planning and Development Committee on the recommendation of The Central Area Plan Implementation Committee in February, 1986.

The terms of reference are attached as APPENDIX 1.

The Committee includes representatives of CAPIC, LACAC, the design professions, etc. The terms of reference allow the core group to add other members as they feel appropriate. The current Committee membership is shown in APPENDIX 2.

VG:s dg  
WP 002TP



TERMS OF REFERENCEURBAN DESIGN COMMITTEE

## INTRODUCTION

Urban design is a component of city planning which addresses the inter-relationships of buildings and open spaces. It is generally concerned with the form and appearance of the structures and open space in which land use activities take place. Specifically, it is concerned with the following visual and functional matters:

## Visual

- massing of buildings
- relationship of buildings to each other
- appearance of individual buildings
- the definition of open space by buildings
- the appearance of open spaces including streets, parks, parking lots, and privately owned areas visible to the public

## Functional

- pedestrian linkages between buildings, between buildings and open space, and between open space and open space
- integration of the pedestrian system with the vehicular system
- solar access
- shelter from wind and the elements
- defensible open space - design that reduces crime

The purpose of urban design is to improve the quality of life and strengthen the economy.

Environmental excellence brings the following benefits:

- the enjoyment of being in a delightful environment enriches everyday living
- a confidence and spirit of well being grows out of pride in a beautiful city
- an attractive physical environment contributes to attracting people both to a particular area in the city and to the city itself. Business will be encouraged to remain and expand
- a good city image will attract business to the city
- a visually attractive city which works well will attract tourism and conventions
- good urban design can contribute to the growth of a city and create more tax assessment and employment





There are significant opportunities for urban design in Hamilton, particularly in the Central Area which already contains many positive urban design features and where change is likely. A small urban design section was set up in 1974 within the Planning and Development Department. Some urban design initiatives have already begun, e.g. downtown streetscaping, heritage district studies, the proposed + 15 walkway system and the waterfront study.

However, it is felt that a greater impetus for urban design is needed. Currently urban design responsibilities are fragmented. It is felt that an advisory committee similar to LACAC and CAPIC would provide a suitable focus for urban design.

It is, therefore, proposed that a committee be set up under the following terms:

#### MANDATE

The responsibilities of the Urban Design Committee are to advise Council on urban design matters. Urban Design Committee will report to the Planning and Development Committee. Its priority will be the Central Area and it will work with the general urban design policies of the Official Plan and the more detailed urban design policies of the Central Area Plan. Specifically, the Urban Design Committee will be responsible for:

1. Generating and reviewing urban design policies.
2. Establishing urban design guidelines for various areas taking into account:
  - a) massing of buildings including heights, setbacks and skyline;
  - b) architectural relationship of buildings to each other including textures, material, detailing and scale;
  - c) the definition of open spaces including enclosure, views, vistas and focal points;
  - d) the treatment of open spaces including streetscaping, landscaping, screening, parking lots, art forms, advertising, etc.;
  - e) the appearance of streetscape including building restoration, cleaning and painting, clutter and advertising signs;
  - f) linkages between buildings and buildings, buildings and open space and open space and open space, including interior walkways, underground walkways, exterior pedestrian links, access for the disabled, etc.;
  - g) integration of the pedestrian and vehicular system;
  - h) weather mitigation including access to sunlight in open spaces, passive solar heating, liveable winter cities, minimizing wind tunnel effects, etc.; and,
  - i) defensible open space - designing environments to reduce crime.

Guidelines will be prepared for both infill and comprehensive development and for both public and privately owned properties. They may be in the form of general guidelines or design briefs for specific sites. The means of implementing the strategy, e.g. legal measures such as zoning and site plan control, negotiation, funding, education and promotion will be specified.

3. Providing information, education and promotion on urban design matters including:
  - urban design awards
  - literature
  - presentations
  - displays
  - seminars
4. Ensuring guidelines and policies are followed by setting up a system for:
  - input into specific proposals
  - reviewing and monitoring results of development on the ground.
5. Ensuring public participation in appropriate urban design matters.
6. Liaising with other committees which have urban design interests, e.g. Central Area Plan Implementation Committee (CAPIC). Downtown Action Plan Co-ordinating Committee (DAPCC), Local Architectural Conservation Advisory Committee (LACAC), Waterfront Implementation Committee (WIC), etc. The Urban Design Committee is intended to supplement these committees rather than supplant their functions.

Liaising with departments and agencies which have urban design interests, etc., Planning and Development Department, City Architects Department, Community Development Department, Ontario Association of Architects, etc.

7. Advising on legislation and funding for urban design.
8. Engaging in organizational planning by:
  - establishing goals and objectives
  - examining trends and issues
  - identifying options and selecting a strategy
  - establishing work program priorities
  - implementing the strategies and work programs
  - monitoring and evaluation
  - reviewing committee's operation and role



## ADMINISTRATION

The Urban Design Committee will include:

- a representative of CAPIC
- a representative of LACAC
- a representative of the design professions e.g. Architect, Landscape Architect, Urban Designer
- a representative of the Central Area Business Community
- a representative of the Planning and Development Committee

These members will have an interest in urban design but not necessarily be professionally qualified. Staff will be relied upon for technical expertise.

The core group will add other members to the committee as they feel appropriate.

The committee will elect a Chairman and Vice-Chairman. Meetings will be held at the call of the Chairman. Other administrative matters will be dealt with by the Committee. A staff person from the Planning and Development Department will provide co-ordination. Staff of City and Regional Departments will be available when necessary.

DG/pb.



## URBAN DESIGN COMMITTEE

## COMMITTEE COMPOSITION

(February 15, 1989)

<u>MEMBERS</u>	<u>REPRESENTING</u>
1. Alderman John Smith, Chairperson c/o Aldermen's Office City Hall, Hamilton 526-2730	Planning and Development Committee
2. Mr. Fred Vermeulen Trevor Garwood-Jones Inc., Architects 185 Young Street Hamilton, Ontario L8N 1V9 528-0468 (B)	Hamilton Society of Architects
3. Mr. Tony Svedas Svedas Koyanagi Inc., Architects 3215 North Service Road Burlington, Ontario L7N 3G2 335-2360	Hamilton Society of Architects
4. Mrs. Diane Dent 4 Bull's Lane Hamilton, Ontario L9A 1C7 574-0554 (H) 575-2042 (B)	Local Architectural Conservation Advisory Committee (LACAC)
Mr. John Mokrycke 117 Mountain Park Avenue Hamilton, Ontario L9A 1A1 389-4067	LACAC alternative
5. Gill Simmons 449 Bay Street North Hamilton, Ontario L8P 1V3 522-9974 (H)	Central Area Plan Implementation Committee (CAPIC)
6. Mr. Gabriel Etele P. O Box 1023, Station "A" Hamilton, Ontario L8N 3R4 523-1646 (B)	Downtown Business Improvement Area
7. Mary Ann Mokrycke 117 Mountain Park Avenue Hamilton, Ontario L9A 1A1 389-4067	Landscape Architect





8. (To be determined)

Chamber of Commerce

9. (To be determined)

Neighbourhood Association





FOR ACTION

15a.

REPORT TO: SUSAN REEDER, SECRETARY  
PLANNING AND DEVELOPMENT COMMITTEE

FROM: J. D. THOMS, COMMISSIONER  
PLANNING AND DEVELOPMENT DEPARTMENT

DATE: 1989 March 8  
COMM FILE:  
DEPT. FILE: ZA-88-104  
BROUGHTON EAST NEIGHBOURHOOD

SUBJECT:

An amended application requesting a change in zoning for property located in the area south of Rymal Road East and east of the proposed extension of Upper Gage Avenue.

RECOMMENDATION

That approval be given to amended Zoning Application 88-104, 779573 Ontario Inc. (Clemente Valeri), owner, for a change in zoning from "AA" (Agricultural) District to "R-4" (Small Lot Single-Family Detached) District (Block "1"), and from "C" (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District (Block "2"), for lands in the area south of Rymal Road East and east of the proposed extension of Upper Gage Avenue, as shown on the attached map marked as APPENDIX "A", on the following basis:

- i) That the lands described as Block "1" be rezoned from "AA" (Agricultural) District to "R-4" (Small Lot Single-Family Detached) District;
- ii) That the lands described as Block "2" be rezoned from "C" (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District;
- iii) That the City Solicitor be directed to prepare a by-law to amend Zoning By-law No. 6593 and Zoning District Map E-49E for presentation to City Council;
- iv) That the proposed changes in zoning are in conformity with the Official Plan for the Hamilton Planning Area.

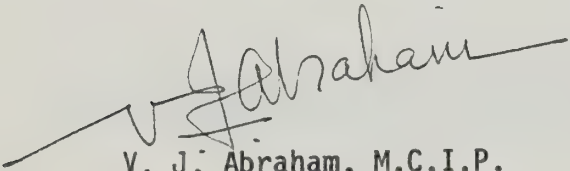
## EXPLANATORY NOTE

The purpose of the by-law is to provide for the following changes in zoning of lands located in the area south of Rymal Road East and east of the proposed extension of Upper Gage Avenue, as shown on the attached map marked as APPENDIX "A":

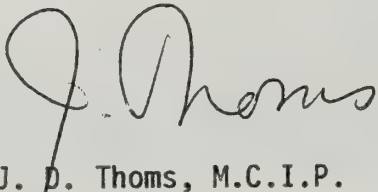
Block "1": Change from "AA" (Agricultural) District to "R-4" (Small Lot Single-Family Detached) District.

Block "2": Change from "C" (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District.

The effect of the by-law is to permit development of the subject lands for small lot single-family detached dwellings in accordance with a draft plan of subdivision.



V. J. Abraham, M.C.I.P.  
Director of Local Planning



J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development Department

## FINANCIAL IMPLICATIONS

N/A.

## BACKGROUND

It is the applicant's intention to amend the draft approved plan of subdivision (Lillian Heights SA-79-09 and 25T-79018) on the subject lands, to provide for 116 small lot single-family dwelling lots and 22 conventional single-family dwelling lots for a total of 138 lots, as opposed to 117 conventional single-family dwelling lots.

## APPLICANT

779573 Ontario Inc. (Clemente Valeri), owner.

### LOT SIZE AND AREA

An 8.767 ha (21.663 acre) tract of land located in the area south of Rymal Road East and east of the proposed extension of Upper Gage Avenue.

### LAND USE AND ZONING

	<u>Existing Land Use</u>	<u>Existing Zoning</u>
<u>Subject Lands</u>	Vacant	"AA" (Agricultural) District and "C" (Urban Protected Residential, etc.) District
<u>Surrounding Lands</u>		
To the north	Townhouses, two-family dwellings and commercial	"RT-10" (Townhouse) District, "AA" (Agricultural) District and "E-2" (Multiple Dwellings) District
To the south	Hydro Electric power line corridor	"A" (Agricultural) District - Glanbrook Township
To the east	Vacant lands and Trans-Canada Pipelines pressure regulator station	"AA" (Agricultural) District and "M-12" (Prestige Industrial, etc.) District
To the west	Vacant lands and townhouses	"AA" (Agricultural) District and "RT-10" (Townhouse) District

### OFFICIAL PLAN

The subject lands are designated "RESIDENTIAL" and "UTILITIES" (TransCanada Pipelines easement) on Schedule "A" - Land Use Concept of the Official Plan. The lands proposed for residential development are designated "RESIDENTIAL" and are subject to, among others, the following policies:

- "A.2.1 The primary uses permitted in the areas designated on Schedule "A" as RESIDENTIAL will be for dwellings. Various types of dwellings are included within this designation, while preference will be given to the locating of similar densities of development together."



"A.2.1.8 It is the intent of Council that a variety of housing styles, types and densities be available in all RESIDENTIAL areas of the City, and further, that proposals for new development or redevelopment will contribute to the desired mix of housing where practicable. In this regard, Council will be guided by the Housing Policies of Subsection C.7 and the Neighbourhood Plan Policies of Subsection D.2."

On the basis of the foregoing, the proposal complies with the intent of the Official Plan.

#### NEIGHBOURHOOD PLAN

Designated for "Single and Double" residential development on the approved Broughton East Neighbourhood Plan, the proposal complies.

#### COMMENTS RECEIVED

- The Building Department has advised that:  
"The lands in the "R-4" Zoning District shall be in a plan of subdivision as per Section 9A (2)(c)."
- The Traffic Department, Hamilton Region Conservation Authority and The Local Architectural Conservation Advisory Committee Staff have no comments or objections.
- The Hamilton-Wentworth Engineering Department has advised that:  
"Public watermains as well as sanitary and storm sewers are not available to service the subject lands.  
  
The subject lands are subject to development through a suitable plan of subdivision.  
  
I believe our previous comments were submitted under Lillian Heights draft plan of subdivision. Those comments are still applicable to this application."

#### COMMENTS

1. The proposal complies with the intent of the Official Plan.
2. The proposal complies with the intent of the approved Broughton East Neighbourhood Plan.

3. The proposal can be supported for the following reasons:

- it implements the intent of the Official Plan and the approved Broughton East Neighbourhood Plan;
- it would be compatible with existing and future intended development in the surrounding area which is comprised of single-family dwellings, townhouse dwellings and multiple-family dwellings.

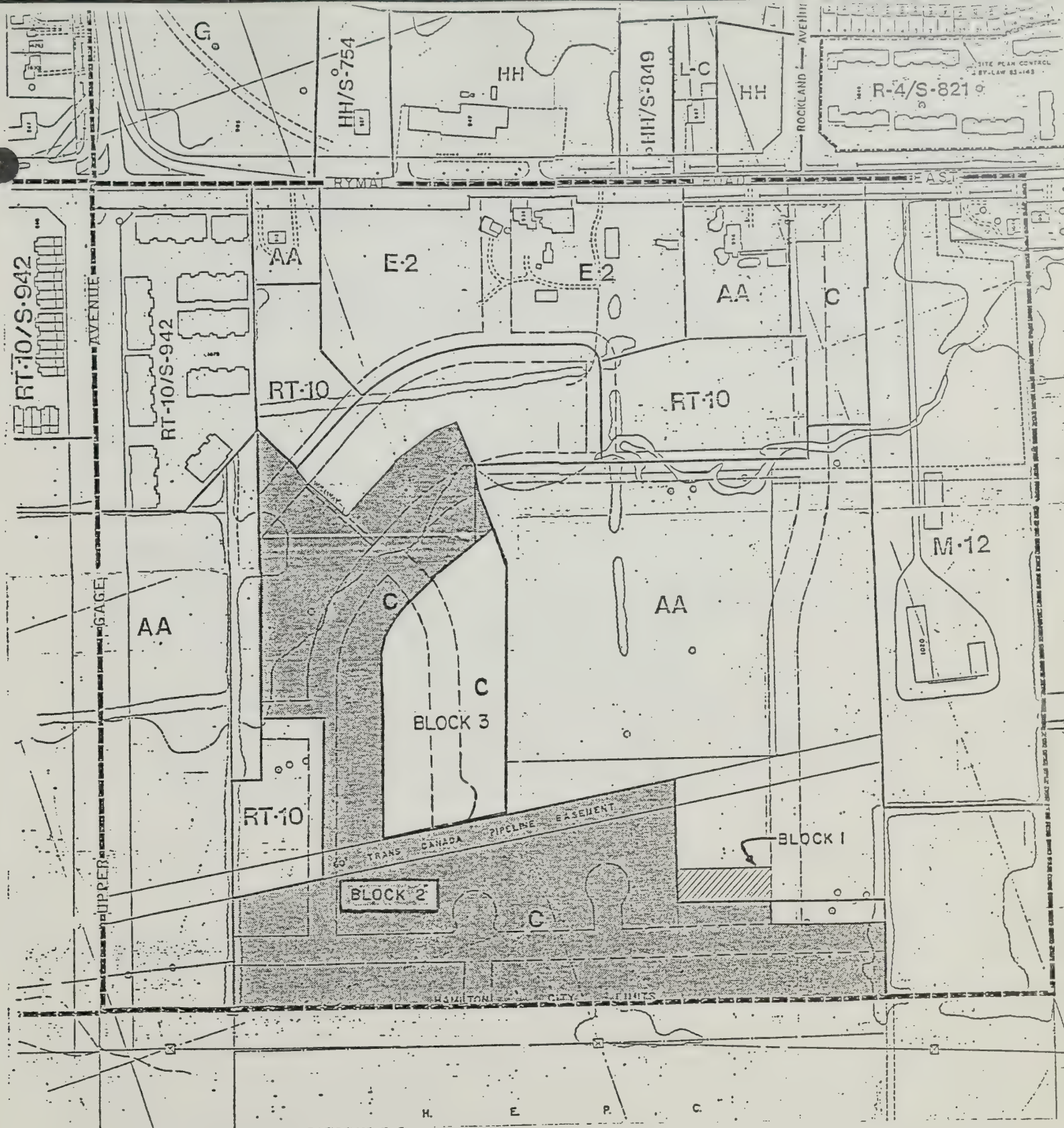
4. As a condition of draft plan approval, the applicant is required to provide full municipal services (piped municipal water supply, storm and sanitary sewers) for the subdivision.

#### CONCLUSION

That approval be given to the amended application to provide for a mix of small lot single-family detached lots and conventional single-family dwelling lots in accordance with APPENDIX "A" attached.

GAW:CS/ma  
Attach.  
0157P





### Legend

Proposed change in zoning from:



\*AA\* (Agricultural) District to "R-4" (Small Lot Single-Family Detached) District.



\*C\* (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District.



No change







FOR ACTION

15b

REPORT TO: SUSAN K. REEDER, SECRETARY OF THE  
PLANNING AND DEVELOPMENT COMMITTEE

FROM: J. D. THOMS  
COMMISSIONER  
PLANNING AND DEVELOPMENT

DATE: 1989 MARCH 2  
COMM FILE:  
DEPT FILES: SA-79-09  
25T-79018

SUBJECT

Revision to the Draft-Approved Plan of Subdivision "Lillian Heights"

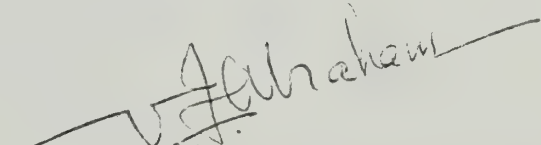
RECOMMENDATION

That approval be given to amend the draft approved subdivision now owned by Lillian Heights Limited, under Regional File No. 25T-79018, City of Hamilton File No. SA-79-09 by changing condition a) as follows:

- a) That this approval apply to the plan prepared by A. J. Clarke and Associates, dated March 24, 1987, revised to show 174 lots, 3 blocks for 58 townhouse units, 2 blocks for 216 medium density apartment units, 10 blocks for development with adjacent land, two blocks for sewer easements, one block for open space purposes, one block as a walkway and five blocks for 0.3m reserves.



J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development



V. J. Abraham, M.C.I.P.  
Director - Local Planning

FINANCIAL IMPLICATIONS

N/A

BACKGROUND

Owner

Lillian Heights Limited, c/o C. Valery and P. Paletta

Agent

Pelech, Otto & Powell, Barristers and Solicitors  
c/o J. Pelech, Hamilton, Ontario

Surveyor

A. J. Clarke and Associates, Hamilton, Ontario

Location

The lands, comprising 15.82 ha, are located at the south side of Rymal Road, west of the Trans Canada Pipeline Compressor Station and north of the H.E.P.C. right-of-way in the Broughton East Neighbourhood, being part of Lot 12, Concession 1, Township of Glanford, now in the City of Hamilton.

History

The City of Hamilton Council at its meeting held on July 28, 1987 recommended approval of the plan subject to certain conditions.

Regional Council approved this plan on August 18, 1987.

PROPOSED REVISION

The agent for the owner has requested that Phase 2 of Lillian Heights be subdivided into 141 lots for zero lot line development. Phase I includes 4 blocks for multiple residential development, 36 lots for single-family dwellings and two blocks for future development.

COMMENT

1. The area of Phase 2 of Lillian Heights, under Regional File No. 25T-79018, will be subject to the recommended conditions of draft approval by City Council.
2. Phase 2 of Lillian Heights was revised to show 116 lots for zero lot line development and 22 lots for development of 12.0m lots, a total of 138 lots.
3. The owner has made a land exchange with the City of Hamilton Board of Education and with Trans Canada Pipelines Limited.
4. Block "168" shown as a sewer easement and as an emergency access between Street "A" (now Broughton Avenue) and Street "F" (now shown as Beaverbrook Avenue) is still required and must be shown on the final plan for Phase 2 of Lillian Heights.
5. The purpose of this revision is to increase the number of draft approved lots, in accordance with a corresponding rezoning of the subject land.





RYMAL ROAD EAST

ROCKLAND  
AVENUE

FUTURE EXTENSION OF UPPER GAGE AVENUE

**Answer: D** **Answer: D** **Answer: D** **Answer: D** **Answer: D**

Answer: Yes

B. C. 195  
TOWNSHIP

BLOCK 15B  
MELDING DENSITY APPARATUS

STREET

—GLEN TP?  
MELISSA FLEWITT AT 11:15  
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# PHASE 1

1. 1991-1992  
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263. 2515-

STREET 'A

Block '168'

Block '170

Mont' 163'

STREET 21

Blank 164

~~State~~ ~~the~~

STREET

STREET

COURT "J"

PLATE 2

26 Oct 1999

STREET F.

COURT

107  
107  
107

BLOC # 166  
TOWNHOUSE S

COURT:



1

7

1

Box 162

AREA OF DEFERRED DEVELOPMENT RE-EVALUATED  
BY ENVIRONMENT MINISTRY

**DRAFT PLAN**  
**LILLIAN**  
**HEIGHTS**  
**PART OF LOT 12 CONCESSION I**  
FORMED BY THE CANTON OF HAMILTON  
**CITY OF HAMILTON**  
THE DISTRICT OF HAMILTON  
IN THE COUNTY OF HAMILTON  
IN THE PROVINCE OF ONTARIO  
1907

NEW PLAN

Total sales of *Androsyntheris* = 12,000 specimens

Orange County	1,000 units
Rock County	2,000 units
Other counties	9,000 units
Grand total	12,000 units

WELFARE

... ..

... ..

THIS IS A DRAFT PLAN AND IS  
SUBJECT TO REVISION AND AMENDMENT  
WITHOUT NOTICE.

[illegible]

# STANDARD CLASSIFICATION

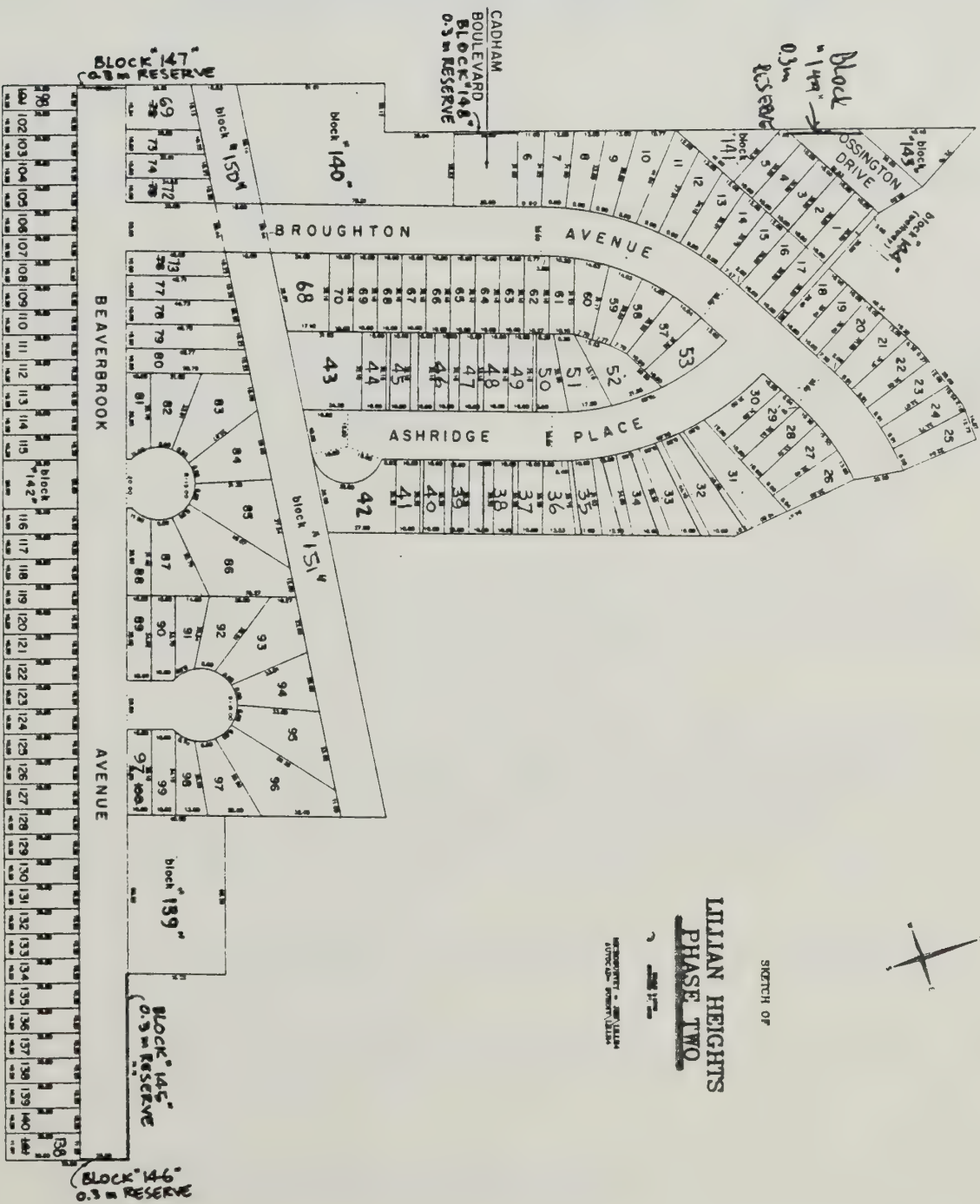
**A. J. Clark & Associates**



SHEET OF

# LILLIAN HEIGHTS PHASE TWO

PREPARED BY: J. CLARK AND ASSOCIATES, LTD.  
LONDON, ONTARIO, CANADA





FOR ACTION

16.

REPORT TO: SUSAN REEDER, SECRETARY  
PLANNING AND DEVELOPMENT COMMITTEE

FROM: J. D. THOMS, COMMISSIONER  
PLANNING AND DEVELOPMENT DEPARTMENT

DATE: 1989 March 8  
COMM FILE:  
DEPT. FILE: ZA-88-114  
Eleanor  
Neighbourhood

SUBJECT:

An amended application requesting a change in zoning - property located at the rear of No. 1412 Upper Gage Avenue fronting onto Elmore Drive.

RECOMMENDATIONS

1. That amended Zoning Application 88-114, Frank Bottega and Jackueleine Bottega, owners, requesting a change in zoning from "L-mr-1" (Planned Development-Multiple Residential) District to "C" (Urban Protected Residential, etc.) District for property located at the rear of No. 1412 Upper Gage Avenue fronting onto Elmore Drive, as shown on the attached map marked as APPENDIX "A", be DENIED for the following reason:
  - o it would be inappropriate to leave the existing single-family dwelling located at No. 1412 Upper Gage Avenue in the "L-mr-1" (Planned Development-Multiple Residential) District, in that the property is not suitable for inclusion with adjoining lands for planned multiple residential development.
2. That approval be given to an amended Zoning Application 88-114, Frank Bottega and Jackueleine Bottega, owners, requesting a change in zoning from "L-mr-1" (Planned Development - Multiple Residential) District to "C" (Urban Protected Residential, etc.) District for property located at No. 1412 Upper Gage Avenue, as shown on the attached map marked as APPENDIX "B" on the following basis:
  - i) That the subject lands be rezoned from "L-mr-1" (Planned Development - Multiple Residential) District to "C" (Urban Protected Residential, etc.) District;
  - ii) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593 and Zoning District Map E-38C for presentation to City Council;
  - iii) That the proposed change in zoning is in conformity with the Official Plan for the Hamilton Planning Area;
  - iv) That the Eleanor Neighbourhood Plan be amended by redesignating the subject lands from "Low Density Apartments" to "Single and Double" Residential.



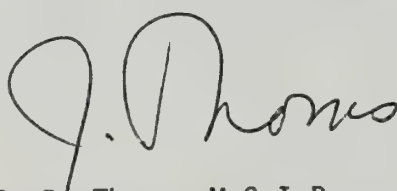
### EXPLANATORY NOTE

The purpose of the By-law is to provide for a change in zoning from "L-mr-1" (Planned Development - Multiple Residential) District to "C" (Urban Protected Residential, etc.) District for property located at No. 1412 Upper Gage Avenue, as shown on the attached map marked as APPENDIX "B".

The effect of the By-law is to establish appropriate zoning for the existing dwelling fronting on Upper Gage Avenue, and permit the severance of the rear portion of the property to create a building lot for a single-family detached dwelling fronting onto Elmore Drive.



V. J. Abraham, M.C.I.P.  
Director of Local Planning



J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development Department

### FINANCIAL IMPLICATIONS

N/A

### BACKGROUND

#### o Proposal

It is the applicant's intention to rezone the rear portion of No. 1412 Upper Gage Avenue to permit a single-family dwelling lot fronting onto Elmore Drive.

#### o Land Severance Application

At its meeting held on October 5, 1988 the Regional Land Division Committee considered and approved land severance application H-124-88 for consent to convey the rear portion (approximately 15.24 m (50.0 ft.) x 36.5 m (120.0 ft.)) and to retain the front portion (15.24 m (50.0 ft.) x 36.5 m (120.0 ft.)) occupied by a single-family dwelling. The land severance application is conditional upon the final approval of the subject zoning application.

### APPLICANTS

Frank Bottega and Jackueline Bottega, owners.

### LOT SIZE AND AREA

- o 1.24 m (50.0 ft.) of lot frontage on Elmore Drive;
- o 36.5 m (120.0 ft.) average lot depth; and,
- o 563.8 m<sup>2</sup> (6,069 sq.ft.) of lot area.

### LAND USE AND ZONING

	<u>EXISTING LAND USE</u>	<u>EXISTING ZONING</u>
<u>SUBJECT LANDS</u>	Vacant	"L-mr-1" (Planned Development-Multiple Residential) District
<u>SURROUNDING LANDS</u>		
to the north	Vacant	"L-mr-1" (Planned Development-Multiple Residential) District
to the south	Single-family dwellings	"C" (Urban Protected Residential, etc.) District and "R-4" (Small Lot Single-Family Detached) District
to the east	Single-family dwellings	"C" (Urban Protected Residential, etc.) District
to the west	Single-family dwellings and two-family dwellings	"D" (Urban Protected Residential - One and Two-Family Dwellings, etc.) District, modified

### OFFICIAL PLAN

Designated "Residential", the proposal complies with the intent of the Plan.

### NEIGHBOURHOOD PLAN

Designated for "Low Density Apartments" on the approved Eleanor Neighbourhood Plan, the proposal does not comply. Approval of the application would involve redesignation of the affected lands from "Low Density Apartments" to a "Single and Double" residential land use.

### COMMENTS RECEIVED

- o The Building Department has advised that "the wire enclosure shall be removed from the rear lot line".
- o The Traffic Department, Hamilton Region Conservation Authority, The Local Architectural Conservation Advisory Committee Staff have no comments or objections.

- o The Hamilton-Wentworth Engineering Department has advised that:

"public watermains and separate storm and sanitary sewers are available to service the subject land.

We do not anticipate any further road widening allowance widenings at this time".

#### COMMENTS

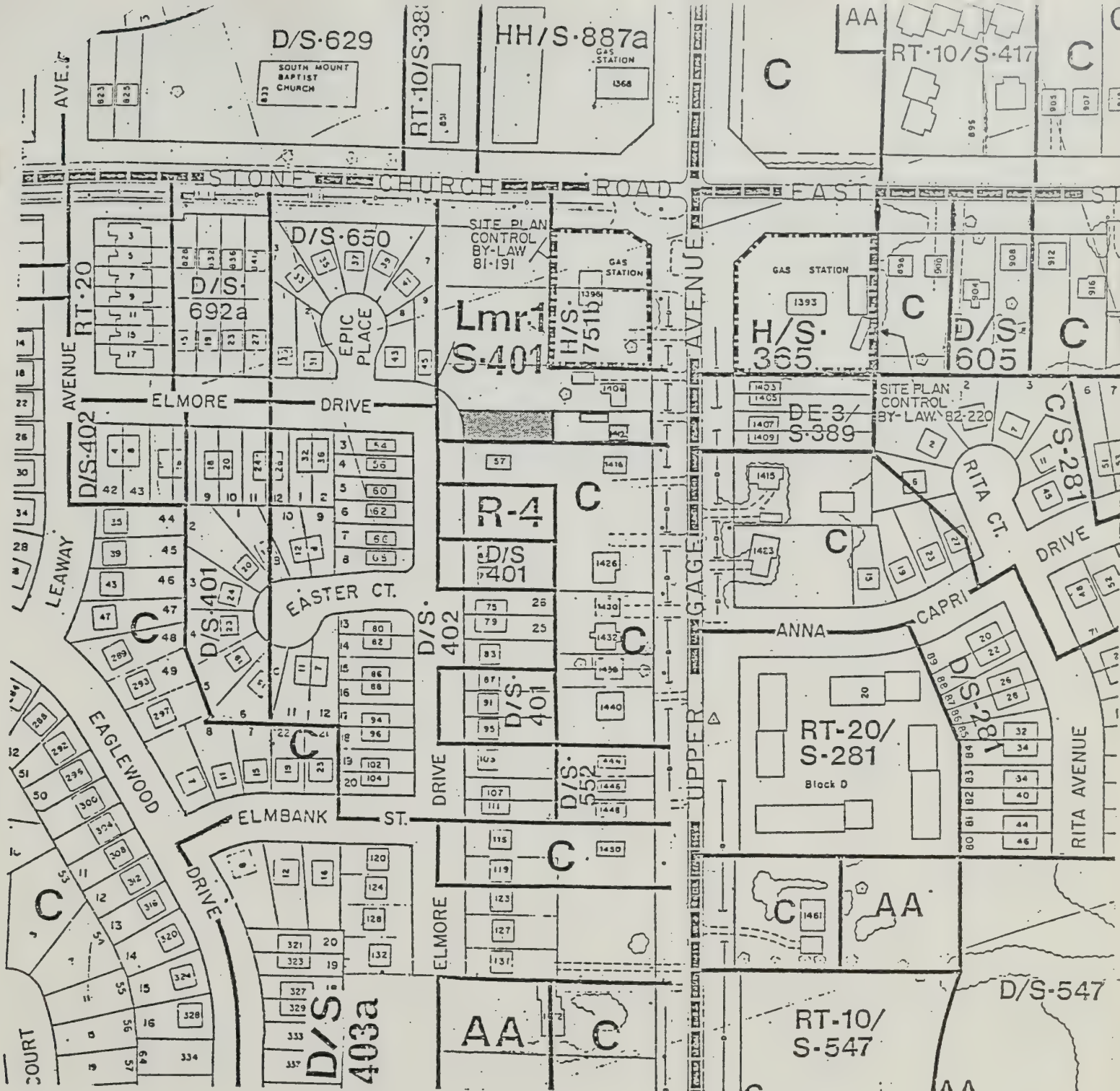
1. The proposal complies with the intent of the Official Plan.
2. The proposal would involve an amendment to the approved Eleanor Neighbourhood Plan to redesignate the affected lands from "Low Density Apartments" to "Single and Double" residential land use.
3. The proposal has merit for the following reasons:
  - i) it implements the Official Plan;
  - ii) it is compatible with existing and future development contemplated in this area, and will not interfere with the orderly development of the neighbourhood;
  - iii) a similar zoning application was approved for adjoining lands to the south (ZA-83-07).

However, it would be more appropriate to rezone the entire property, thereby rationalizing the zoning district boundary and reflecting the existing and proposed single-family residential uses. Furthermore, it would be inappropriate to leave the existing single-family dwelling located at No. 1412 Upper Gage Avenue in the "L-mr-1" District, in that the property is not suitable for inclusion with adjoining lands for future multiple residential development. On this basis, it is suggested that the application as submitted be denied and approval be given to an amended zoning application to rezone the entire holding, as shown on the attached map marked as APPENDIX "B".

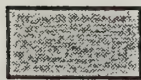
#### CONCLUSION

It is suggested that the application as submitted be denied, and approval be given to an amended Zoning Application to rezone the entire holding.

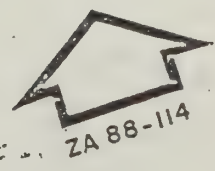




LEGEND

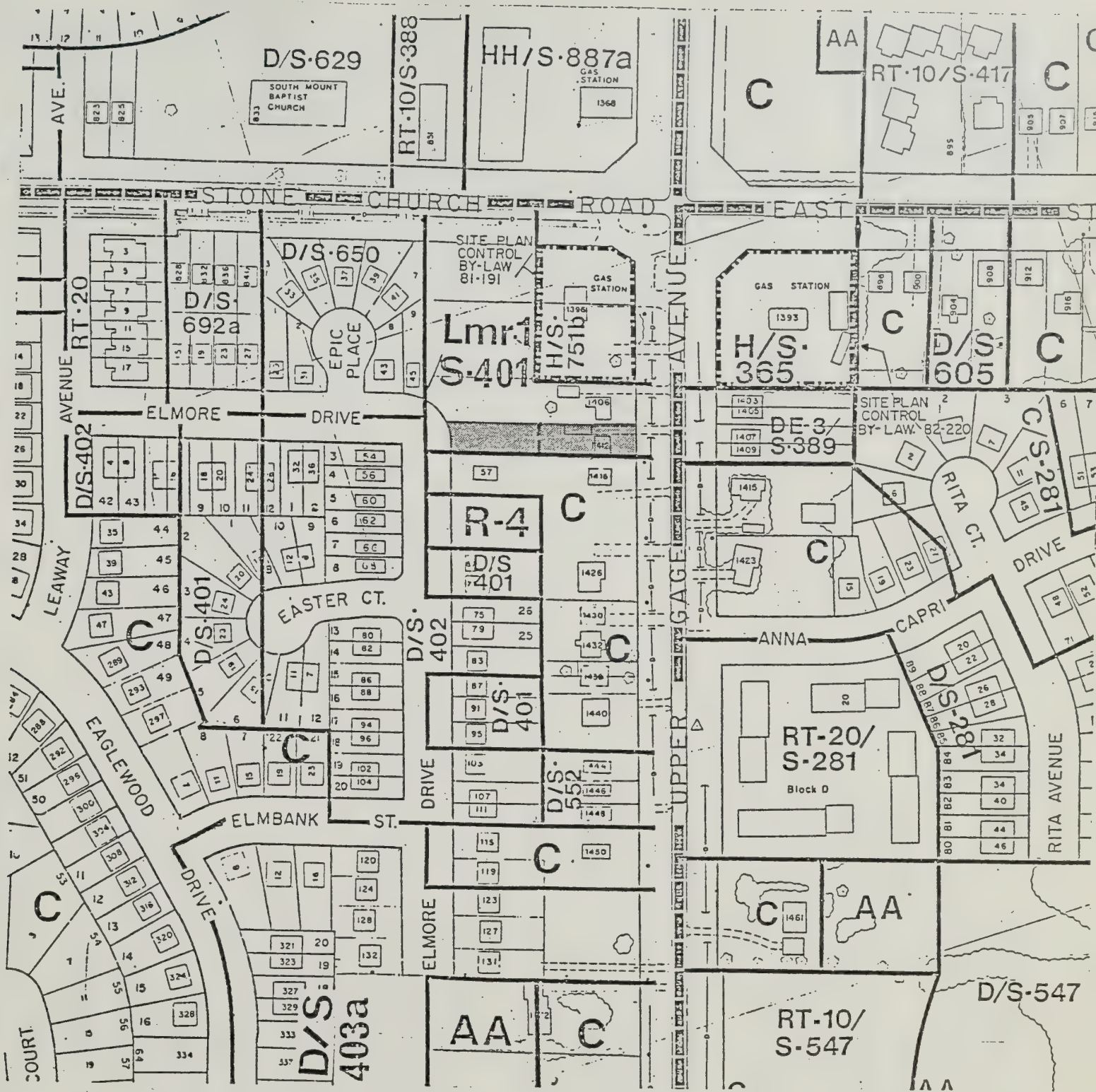


SITE OF THE APPLICATION





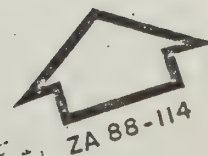




# LEGEND



SITE OF THE APPLICATION





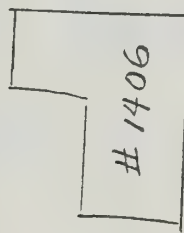
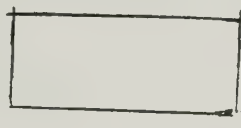
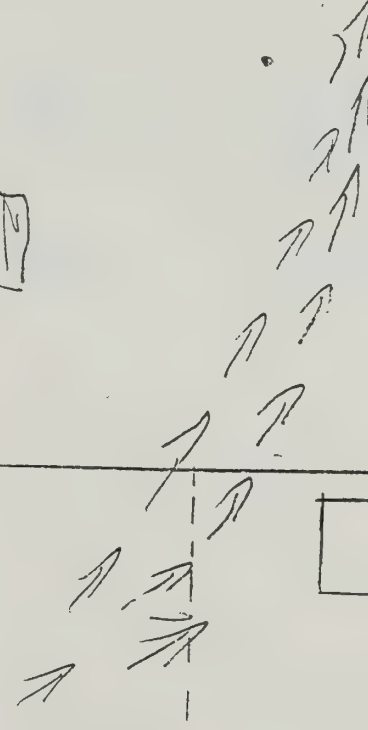
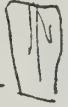
PLOTTING DEPT. FROM  
 N. Y. MRS. STROVER  
 I AM OPPOSED TO THE SEVERANCE  
 BECAUSE OF THE DRAINAGE,  
 DIFFICULTIES THIS WILL CAUSE.  
 AS IN THE DIAGRAM I HAVE  
 SENT, THE WATER COMES  
 ACROSS 1412 TO 1406 THEN  
 DRAINS ALONG SIDE THE  
 GARAGE INTO THE CATCH BASIN  
 ON JOG CITY'S SIDE. AS IT

NOW IT DRAINS GOOD BUT IF  
 MORE WATER COMES ON OWE  
 SIDE WE ARE GOING TO GET  
 FLOODED OUT. THE REASON  
 I THINK SO BECAUSE THEY HAVE  
 TO GO UP SO HIGH. YOU ONLY GO  
 DOWN ONE TO TWO FEET AND  
 YOU HIT BED ROCK. IT WOULD  
 HELP IF THEY HAD TO PUT  
 A CATCH BASIN IN. M. J. Standridge

ELMORE DR.

SEVERANCE

WATER FLOW



JOG  
CITY

CATCH  
BASIN

16a.

UPPER GAGE AVE.



PROPOSED CHANGE IN ZONING FROM L-MR-1 TO C  
PROPERTY DESCRIPTION - NO 1412 UPPER GAGE AVENUE

I AM IN FAVOUR OF ( )

OPPOSED TO (✓) (PLEASE CHECK (V) WHICH)

THIS PROPOSED ZONE CHANGE

.....  
STROMBRIDGE LEO  
STROMBRIDGE JEAN DOROTHY  
1406 UPPER GAGE  
HAMILTON ONT

L8W 1E7

.....  
FILE-ZA88-114      SEQ-00181

*Bar. J. M. L. St. R. H. L. G.*  
SIGNED

PLEASE DIRECT INQUIRIES TO

PLANNING DEPT 526-4445

FOR ACTION

17.

REPORT TO: SUSAN REEDER, SECRETARY  
PLANNING AND DEVELOPMENT COMMITTEE

FROM: J. D. THOMS, COMMISSIONER  
PLANNING AND DEVELOPMENT DEPARTMENT

DATE: 1988 March 10  
COMM FILE:  
DEPT. FILE: ZA-88-105  
GIBSON NEIGHBOURHOOD

SUBJECT:

An amended application requesting modifications in zoning - Nos. 250 and 252 Gibson Avenue North.

RECOMMENDATION

That approval be given to an amended Zoning Application 88-105, D. Nocciolino, owner, requesting a modification to the established "D" (Urban Protected Residential - One and Two-Family Dwellings, Townhouses, etc.) District regulations for property at No. 250 Gibson Avenue North (Block "1"), and a further modification to the "D" District regulations for property at No. 252 Gibson Avenue North (Block "2"), as shown on the attached map marked as APPENDIX "A", on the following reasons:

- i) That the "D" (Urban Protected Residential - One and Two Family Dwellings, Townhouses, etc.) District regulations as contained in Section 10 of Zoning By-law No. 6593, as amended by By-law No. 76-61, applicable to the lands described as Blocks "1" and "2", be modified to include the following variance as a special provision:
  - a) That notwithstanding Section 10.(1) the following commercial uses shall be permitted:
    - 1. An auto body and fender repair shop within the existing building.
    - 2. A public garage, except that no motor-driven vehicles shall be displayed for sale, bought or sold on the property.
- ii) That the amending By-law be added to Section 19B of Zoning By-law No. 6593 as Schedule S-459a, and that the subject lands on Zoning District Map E-21 be notated S-459a;
- iii) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593 and Zoning District Map E-21 for presentation to City Council;
- iv) That the proposed modification in zoning is in conformity with the Official Plan for the Hamilton Planning Area.

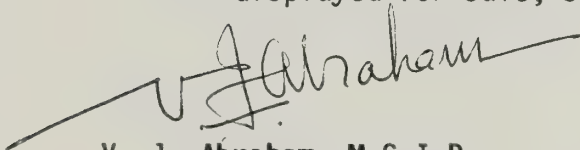


### EXPLANATORY NOTE

The purpose of the By-law is to provide for a modification to the established "D" (Urban Protected Residential - One and Two Family Dwellings, Townhouses, etc.) District regulations for property located at No. 250 Gibson Avenue North (Block "1"), and a further modification to the "D" District regulations for property at No. 252 Gibson Avenue North (Block "2"), as shown on the attached map marked as APPENDIX "A".

The effect of the By-law is to permit, in addition to the uses allowed under the "D" District regulations, the following uses:

- the existing auto body and fender repair shop;
- a public garage, except that no motor-driven vehicles shall be displayed for sale, sold or bought on the property.



V. J. Abraham, M.C.I.P.  
Director of Local Planning



J. D. Thoms, M.C.I.P.  
Commissioner Planning and Development  
Department

### FINANCIAL IMPLICATIONS

N/A

### BACKGROUND

#### ● Proposed Development

The applicant has requested a modification to the established "D" (Urban Protected Residential - One and Two-Family Dwellings, Townhouses, etc.) District (Block "1"), and a further modification to the established "D" District (Block "2"), for property located at Nos. 250 and 252 Gibson Street North, respectively.

The purpose of the proposed modification is to permit, in addition to the uses allowed under the established "D" District regulations, the following uses:

- the existing auto body and fender repair shop;
- a public garage;

It is the applicants intent to buy used motor vehicles from auto auctions, repair/restore the vehicles, and then return them to the auto auction for resale. In this regard, the applicant requires a special city licence (Garage "A" Licence) in order to buy and sell cars. However, he presently has a Garage "B1" Licence (auto body shop and repair), and is not eligible for an "A" Licence unless the zoning is modified to permit the proposed public garage use.





- By-Law No. 76-61

At its meeting of March 9, 1976, City Council passed By-law No. 76-61 respecting zoning changes to implement the Gibson Neighbourhood Plan. In this regard, part of the subject lands (Block 2 - No. 252 Gibson Avenue North) were rezoned from the "K" (Heavy Industry, etc.) District to the "D" (Urban Protected Residential - One and Two-Family Dwellings, Townhouses, etc.) District, modified to permit the existing industrial use and any expansion thereof.

- By-Law No. 74-60

At its meeting of March 26, 1974 City Council passed By-law No. 74-60 respecting zoning changes to implement the Gibson Neighbourhood Plan. In this regard, part of the subject lands (Block "1" - No. 250 Gibson Avenue North) were rezoned from the "J" District to the "D" District.

### APPLICANT

D. Nocciolino, owner.

### LOT SIZE AND AREA

The subject property is irregularly shaped and has a total of approximately:

- 23.1 m (76 ft.) of frontage along Gibson Street; and,
- 948 m<sup>2</sup> (10,203 sq. ft.) of lot area.

### LAND USE AND ZONING

	<u>Existing Use</u>	<u>Existing Zoning</u>
<u>Subject Lands</u>	Collision Service (auto body and fender repair)	"D" (Urban Protected Residential - One- and Two-Family Townhouses, etc.) District and "D" District, modified
<u>Surrounding Lands</u>		
To the north	CN Railway and Industrial	"K" (Heavy Industry, etc.) District
To the south	One-family, two-family, and converted dwellings	"D" (Urban Protected Residential - One and Two-Family Dwellings, Townhouses, etc.) District and "G" (Neighbourhood Shopping Centre, etc.) District



To the west	One and Two-Family dwellings	"D" District
To the east	Commercial (grinding wheel service and auto service), one and two-family dwellings	"D" District, modified and "D" District

#### OFFICIAL PLAN

The subject lands are designated "RESIDENTIAL" on Schedule "A" - Land Use Concept of the Official Plan. The primary uses permitted within this designation are dwellings. In addition, the following policy, among others, respecting non-complying uses would apply:

"3.3.4 Notwithstanding Policies 3.3.1 and 3.3.2 above, and Subsection D.3, where an existing use of land does not comply with the land use designations shown on Schedule "A" or their related policies, Council may recognize this use or other NON-COMPLYING USE in the Zoning By-law, provided that:

- i) It does not aggravate any situation detrimental to adjacent complying uses;
- ii) It does not constitute a danger to surrounding uses and persons by virtue of a hazardous nature, the traffic generated, or other nuisance; and,
- iii) It does not interfere with desirable development in adjacent areas that are in conformity with this Plan".

On the basis of the foregoing, the proposal would not conflict with the intent of the Plan, provided Council deems it desirable.

#### NEIGHBOURHOOD PLAN

The subject lands are designated "SINGLE AND DOUBLE RESIDENTIAL" on the approved Gibson Neighbourhood Plan. The proposal does not comply. However, if the application is approved, the lands should remain designated residential to reflect their long range intended use.

#### RESULTS OF CIRCULARIZATION

- The following agencies have no comments or objections:
  - LACAC;
  - Canadian National Railway;
  - Hamilton Region Conservation Authority;
  - Building Department; and,
  - Ministry of the Environment.





- The Traffic Department has advised as follows:

"While we have no objection to the proposed rezoning, we do see it as being undesirable to have a non-conforming commercial use in a residential area."

- The Hamilton-Wentworth Department of Engineering has advised as follows:

"Public watermains and combined storm and sanitary sewers are available to service the subject lands.

We do not anticipate any further road allowance widening at this time.

The alley adjacent to and to the rear of the subject land is public unassumed."

- The City Clerk's Department - Licencing Division has verbally advised, that the restriction on the public garage use would not prohibit the applicant from obtaining the required Provincial Licence (Wholesale Dealers Licence) and City Licence (Garage "A" - storage only) to undertake the intended use .

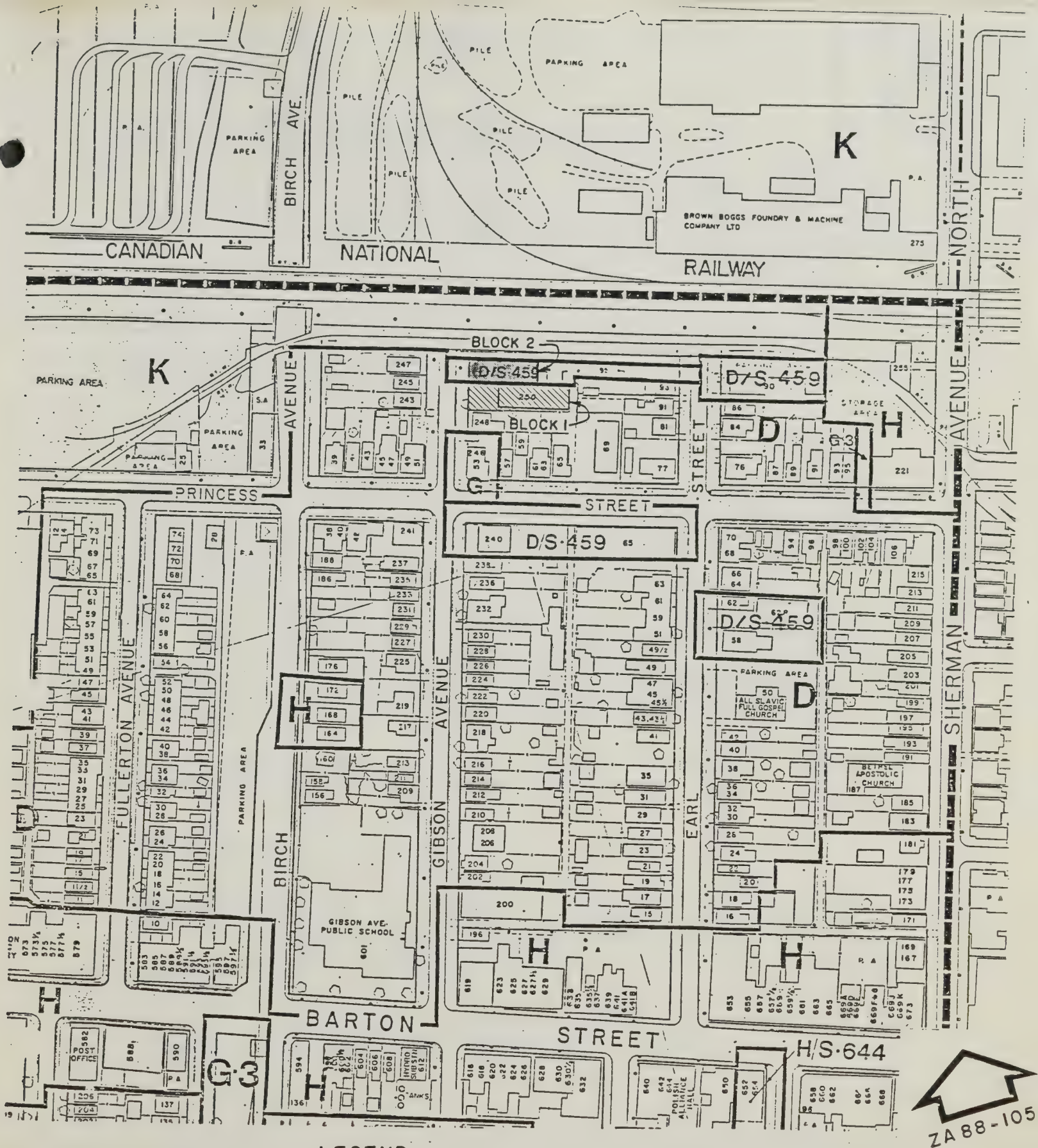
#### COMMENTS

1. The proposal would not conflict with the intent of the Official Plan, provided that Council deems it desirable.
2. The proposal does not comply with the intent of the approved Gibson Neighbourhood Plan. However, if approved the lands should remain designated "SINGLE AND DOUBLE RESIDENTIAL" to reflect their long range intended use.
3. The proposal has merit and can be supported for the following reasons:
  - it would not interfere with planned development for lands in the surrounding area;
  - it would not add to the incompatibility of the use with the surrounding area, in that the public garage use would be accessory to the established legal non-conforming auto body shop. Furthermore, no vehicles will be displayed for sale, bought or sold on the premises;
  - it would not constitute a danger to surrounding uses and persons by virtue of a hazardous nature, the traffic generated, or other nuisance; and,
  - considering the transitional nature of the surrounding area including the rail line and heavy industrial uses to the north, it would not aggravate any situation detrimental to adjacent complying uses.

#### CONCLUSION

On the basis of the foregoing, the application can be supported.





### LEGEND

Block 1



Modification to the "D" (Urban Protected Residential - One and Two Family Dwellings, Townhouses, etc.) District.

Block 2



Further modification to the "D" (Urban Protected Residential - One and Two Family Dwellings, Townhouses, etc.) District.





18.

REPORT TO:    SUSAN REEDER, SECRETARY  
                  PLANNING AND DEVELOPMENT COMMITTEE

FROM:           J. D. THOMS, COMMISSIONER  
                  PLANNING AND DEVELOPMENT DEPARTMENT

DATE:        1988 March 3  
COMM FILE:  
DEPT. FILE: ZA-88-116  
QUINNDALE NEIGHBOURHOOD

SUBJECT:

Request for a change in zoning - property at the northeast corner of Quaker Crescent and Queen Victoria Drive.

RECOMMENDATION

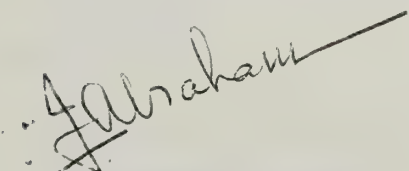
That approval be given to Zoning Application 88-116, S. Khan, owner, for a change in zoning from "C" (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District, for property at the northeast corner of Quaker Crescent and Queen Victoria Drive, as shown on the attached map marked as APPENDIX "A", on the following basis:

- i)        That the subject lands be rezoned from "C" (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District;
- ii)      That the City Solicitor be directed to prepare a by-law to amend Zoning By-law No. 6593 and Zoning District Maps E-49B and E-49C for presentation to City Council;
- iii)     That the proposed change in zoning is in conformity with the Official Plan for the Hamilton Planning Area.

EXPLANATORY NOTE

The purpose of the by-law is to provide for a change in zoning from "C" (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District, for property located at the northeast corner of Quaker Crescent and Queen Victoria Drive, as shown on the attached map marked as APPENDIX "A".

The effect of the by-law is to permit the subdivision of the subject lands into four lots for small lot single-family dwellings.

  
V. J. Abraham, M.C.I.P.  
Director of Local Planning

  
J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development Department

## FINANCIAL IMPLICATIONS

N/A.

## BACKGROUND

It is the applicant's intention to subdivide the property into four lots for small lot single-family dwellings in accordance with the "R-4" District regulations, as opposed to the current three conventional single-family dwelling lots created by land severance applications through the Regional Land Division Committee (file H-122-86).

## APPLICANT

Shabbir Khan, owner.

## LOT SIZE AND AREA

- 44.29 m (145.33 ft.) of lot frontage on Queen Victoria Drive;
- 30.48 m (100.0 ft.) of lot flankage on Quaker Crescent; and,
- 1,338.78 m<sup>2</sup> (14,411.0 sq. ft.) of lot area.

## LAND USE AND ZONING

	<u>Existing Land Use</u>	<u>Existing Zoning</u>
<u>Subject Lands</u>	Vacant	"C" (Urban Protected Residential, etc.) District
<u>Surrounding Lands</u>		
To the north	Single-family dwellings	"C" (Urban Protected Residential, etc.) District
To the south	Single-family dwellings	"C" (Urban Protected Residential, etc.) District

To the east	Single-family dwellings and semi-detached dwellings	"C" (Urban Protected Residential, etc.) District and "D" (Urban Protected Residential - One- and Two-Family Dwellings, Townhouses, etc.) District
To the west	Vacant lands and single-family dwellings	"AA" (Agricultural) District and "C" (Urban Protected Residential, etc.) District

#### OFFICIAL PLAN

Designated "Residential", the proposal complies.

#### NEIGHBOURHOOD PLAN

Designated for "Single and Double" residential development on the approved Quinndale Neighbourhood Plan, the proposal complies.

#### COMMENTS RECEIVED

- The Building Department has advised that:  
"The lands are subject to a plan of subdivision as per Section 9A(2)(c)."
- The Traffic Department, Hamilton Region Conservation Authority and The Local Architectural Conservation Advisory Committee staff have no comments or objections.
- The Hamilton-Wentworth Engineering Department has advised that:  
"Public watermains and separate storm and sanitary sewers are available to service the subject lands.  
  
We do not anticipate any further road allowance widenings at this time."

#### COMMENTS

1. The proposal complies with the Official Plan.
2. The proposal complies with the intent of the approved Quinndale Neighbourhood Plan.

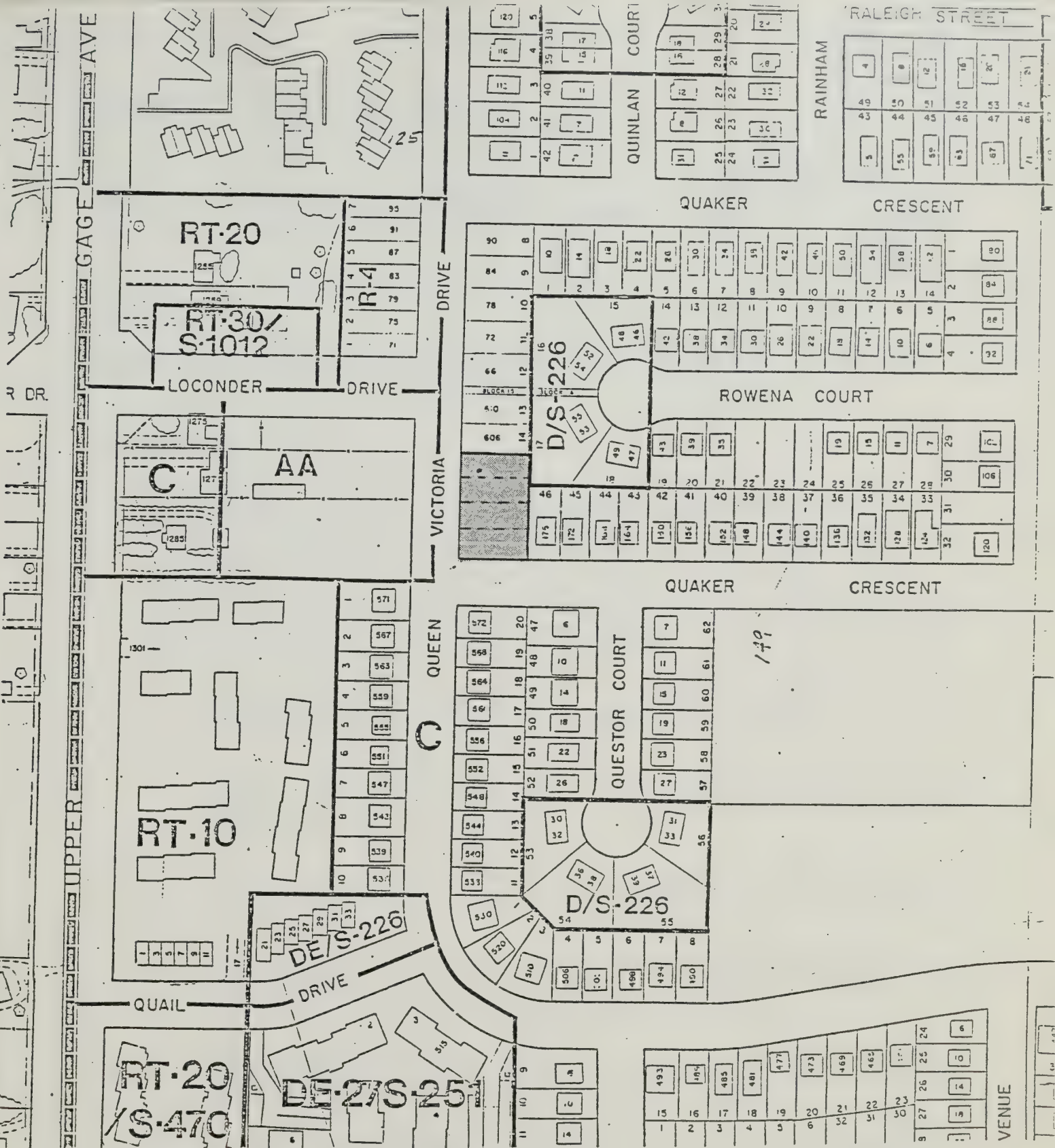


3. The proposal can be supported for the following reasons:
  - i) it implements the intent of the Official Plan and Approved Neighbourhood Plan;
  - ii) it would be compatible with existing single-family development to the north, south and east, semi-detached development to the north-east, small lot single-family development to the north-west; and future designated commercial development on vacant lands on the opposite side of Queen Victoria Drive. The introduction of an additional building lot at this location would have minimal impact on established development in the surrounding area;
  - iii) a similar zoning application to establish "R-4" (Small Lot Single-Family Detached) District zoning (ZA-85-36) was approved for property located on the west side of Queen Victoria Drive north of Loconder Drive.
4. Under the requested "R-4" District regulations, the applicant is required to maintain a side yard of a minimum of 1.2 m (3.94 ft.) where it abuts a flankage street, or any other residential district. In addition, maintenance easements are required to be provided along the zero side yard.
5. Should the zoning application be approved, the applicant will have to apply for approval of land severances through the Regional Land Division Committee.

#### CONCLUSION

On the basis of the foregoing, the application can be supported.

GAW:CS  
0157P



# LEGEND



SITE OF THE APPLICATION





19.

REPORT TO: SUSAN REEDER, SECRETARY  
PLANNING AND DEVELOPMENT COMMITTEE

FROM: J. D. THOMS, COMMISSIONER  
PLANNING AND DEVELOPMENT DEPARTMENT

DATE: 1989 March 3  
COMM FILE:  
DEPT. FILE: ZA-88-125  
Allison  
Neighbourhood

SUBJECT:

Request for a change in zoning for lands located on the east side of Upper James Street south of Rymal Road East.

RECOMMENDATION

That approval be given to Zoning Application 88-125, Chrysler Canada Limited, lessee, for a change in zoning for Block "1" from "HH" (Restricted Community Shopping and Commercial) District, modified to "G-1" (Designed Shopping Centre) District, and Block "2" from "G-1" (Designed Shopping Centre) District to "HH" (Restricted Community Shopping and Commercial) District modified, for property located on the east side of Upper James Street south of Rymal Road East, as shown on the attached map marked as APPENDIX "A", on the following basis:

- i) That the lands described as Block "1" be rezoned from "HH" (Restricted Community Shopping and Commercial) District, modified to "G-1" (Designed Shopping Centre) District;
- ii) That the lands described as Block "2" be rezoned from "G-1" (Designed Shopping Centre) District to "HH" (Restricted Community Shopping and Commercial) District, modified;
- iii) That Schedule "A" to By-law No. 88-93 be amended by adding the lands described as Block "2" thereto, and deleting the lands described as Block "1" therefrom;
- iv) That the amending By-law be added to Section 19B of Zoning By-law No. 6593 as Schedule S-1071a, and that the lands described as Block "2" be notated as S-1071a on Zoning District Map E-9E;
- v) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593, as amended by By-law No. 88-93, and Zoning District Map E-9E for presentation to City Council;
- vi) That the proposed change in zoning is in conformity with the Official Plan for the Hamilton Planning Area.

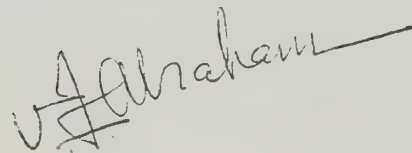


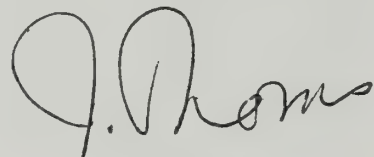
### EXPLANATORY NOTE

The purpose of the By-law is to provide for a change in zoning for a strip of land on the east side of Upper James Street in the area south of Rymal Road East, as shown on the attached map marked as APPENDIX "A" on the following basis:

- Block 1 - Change in zoning from "HH" (Restricted Community Shopping and Commercial) District, modified to "G-1" (Designed Shopping Centre) District.
- Block 2 - Change in zoning from "G-1" (Designed Shopping Centre) District to "HH" (Restricted Community Shopping and Commercial) District, modified.

The effect of the proposed change in zoning is to permit the re-alignment of the property line to allow a more desirable parking arrangement for the existing restaurant (MacDonald's) to the north and the proposed automobile dealership (Chrysler) to the south.

  
V. J. Abraham, M.C.I.P.  
Director of Local Planning

  
J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development Department

### FINANCIAL IMPLICATIONS

N/A

### BACKGROUND

#### o Proposed Development

The applicant has requested a change in zoning for the following:

- Block "1": From the "HH" (Restricted Community Shopping and Commercial) District, modified to "G-1" (Designed Shopping Centre) District.
- Block "2": From the "G-1" (Designed Shopping Centre) District to "HH" (Restricted Community Shopping and Commercial) District, modified.

The purpose of the proposed change in zoning is to permit the re-alignment of the property line to allow a more desirable parking arrangement for the existing restaurant (MacDonald's) to the north and the proposed automobile dealership (Chrysler) to the south.

#### o By-law No. 88-93

At its meeting of April 12, 1988 City Council passed By-law No. 88-93. The purpose of the By-law was to provide for a change in zoning from "G-1" (Designed Shopping Centre) District to "HH" (Restricted Community Shopping and Commercial) District, modified for the adjoining lands to the south.

The effect of the By-law was to permit a new and used car dealership, including an ancillary automobile body/fender repair shop and paint shop.

#### APPLICANT

Chrysler Canada Limited, lessee.

#### LOT SIZE AND AREA

The subject property is an irregular shaped parcel of land having:

- o Block "1": 6.096 m (20.00 ft.) of lot width;  
33.528 m (110.00 ft.) of lot depth; and  
204.38 m<sup>2</sup> (2,200.00 sq. ft.) of lot area.
- o Block "2": 2.37 m (7.78 ft.) of frontage on Upper James Street;  
48.939 m (160.56 ft.) of lot depth; and,  
262.79 m<sup>2</sup> (2,825.55 sq. ft.) of lot area.

#### LAND USE AND ZONING

	<u>EXISTING LAND USE</u>	<u>EXISTING ZONING</u>
<u>SUBJECT LANDS</u>	Vacant	"G-1" (Designed Shopping Centre) District, and "HH" (Restricted Community Shopping and Commercial) District, modified
<u>SURROUNDING LANDS</u>		
to the north	Gas station, restaurant	"G-1" (Designed Shopping Centre) District
to the south	Vacant	"HH" (Restricted Community Shopping and Commercial) District, modified
to the east	Vacant and single-family dwellings	"B" (Suburban Agricultural and Residential) District
to the west	Various retail/commercial establishments	"HH" (Restricted Community Shopping and Commercial) District

#### OFFICIAL PLAN

The subject lands are designated "COMMERCIAL" on Schedule "A" - Land Use Concept of the Official Plan, and are also located within "SPECIAL POLICY AREA 31" on Schedule "B". The proposal does not conflict with the intent of the Plan.

### NEIGHBOURHOOD PLAN

The subject lands are designated "COMMERCIAL" in the Proposed Allison Neighbourhood Plan. The proposal does not conflict with the intent of the Plan.

### RESULTS OF CIRCULARIZATION

o The following agencies have no comment or objection:

- LACAC;
- Traffic Department;
- Hamilton Region Conservation Authority.

o The Building Department has advised as follows:

"Parcel 'B' (Block 2) shall have the same restrictions as the remaining lands under By-law 88-93 with respect to uses."

o The Hamilton Department of Engineering has advised as follows:

"...public watermains and separate storm and sanitary sewers are available to service the subject land. Servicing details will be dealt with at the site plan or severance stages.

For the information of the applicant, we will recommend, as a condition of development approval, that sufficient land be dedicated to the Region to establish the property line 18.20 m (60 ft.) from the centreline of construction on Upper James Street. We recommend that the applicant's surveyor contact the Regional Surveys Department at 526-4185 prior to preparing a survey plan, due to the uneven nature of the road widenings taken at the intersection".

### COMMENTS

1. The proposal complies with the intent of the Official Plan.
2. The proposal does not conflict with the intent of the Proposed Allison Neighbourhood Plan.
3. The proposal has merit and can be supported for the following reasons:
  - o it is simply a re-alignment of the property/zoning line to allow a more desirable parking arrangement for the existing restaurant (MacDonald's) to the north and the proposed automobile dealership (Chrysler) to the south.

4. Considering that the applicant intends to expand the parking facilities for the proposed car dealership on the adjoining lands to the south, it would be appropriate to apply the same special requirements of By-law 88-93 which pertain to the adjoining lands.

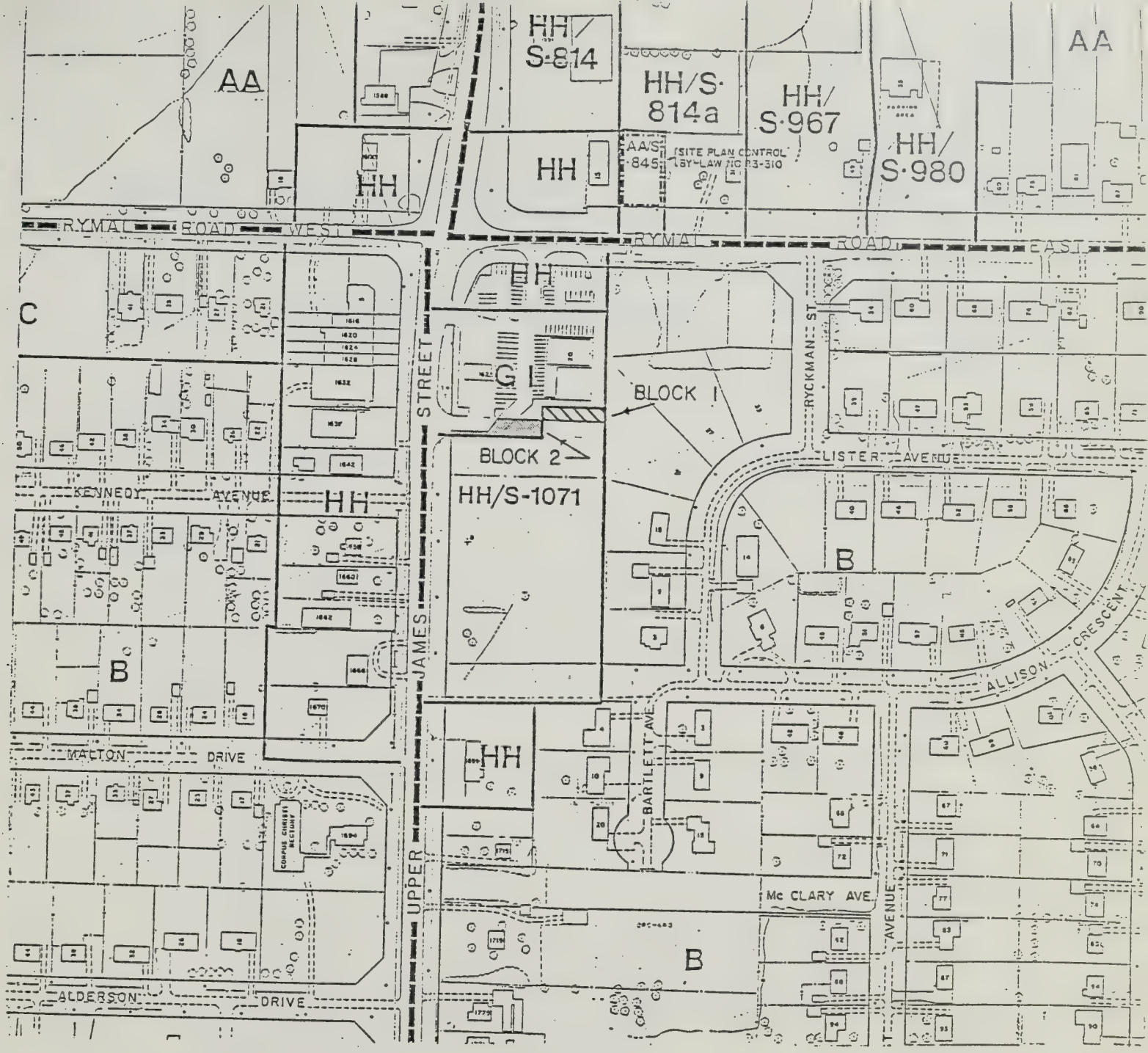
CONCLUSION

On the basis of the foregoing, the application can be supported.

MPS/nd  
WP0372P







## LEGEND

### BLOCK 1

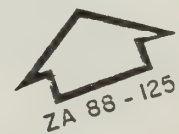


CHANGE IN ZONING FROM "HH" (RESTRICTED COMMUNITY SHOPPING AND COMMERCIAL) DISTRICT, MODIFIED TO "G-1" (DESIGNED SHOPPING CENTRE) DISTRICT.

### BLOCK 2



CHANGE IN ZONING FROM "G-1" (DESIGNED SHOPPING CENTRE) DISTRICT TO "HH" (RESTRICTED COMMUNITY SHOPPING AND COMMERCIAL) DISTRICT, MODIFIED.





FOR ACTION

20.

REPORT TO: SUSAN REEDER, SECRETARY  
PLANNING AND DEVELOPMENT COMMITTEE

FROM: J. D. THOMS, COMMISSIONER  
PLANNING AND DEVELOPMENT DEPARTMENT

DATE: 1989 March 3  
COMM FILE:  
DEPT. FILE: ZA-88-128  
Landsdale  
Neighbourhood

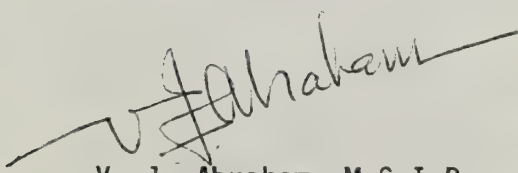
SUBJECT:

Request for a modification in zoning - No. 189 Oak Avenue.

RECOMMENDATION

That Zoning Application 88-128, Eric Charles, owner, requesting a modification to the established "D" (Urban Protected Residential - One and Two Family, Townhouses, etc.) District regulations to permit 4 dwelling units in the existing building, for the property located at No. 189 Oak Avenue, as shown on the attached map marked as APPENDIX "A", be DENIED for the following reasons:

- i) it represents an intrusion of a multiple-unit dwelling into an area occupied primarily by one and two-family dwellings;
- ii) it represents an over-intensification of use, in that the property does not meet the minimum lot area requirement for a converted dwelling in a "D" (Urban Protected Residential - One and Two-Family Dwellings, etc.) District. The minimum lot area requirement is 270.0 m<sup>2</sup> (2,906.26 sq.ft.), whereas the property only has 167.22 m<sup>2</sup> (1,800.0 sq.ft.) of lot area. Furthermore, the proposed four dwelling units which range in floor area from approximately 34.6 m<sup>2</sup> (372.4 sq. ft.) to a maximum of approximately 45.9 m<sup>2</sup> (494.1 sq. ft.) do not provide the minimum 65.0 m<sup>2</sup> (699.65 sq. ft.) of floor area for a "Class A Dwelling Unit";
- iii) adequate parking and manoeuvring space cannot be provided for the five off-street parking spaces required for the converted dwelling; and,
- iv) approval of the application would establish an undesirable precedent and set the stage for other land owners to convert their dwellings for multiple occupancy.

  
V. J. Abraham, M.C.I.P.  
Director of Local Planning

  
J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development Department



## FINANCIAL IMPLICATIONS

N/A

## BACKGROUND

### o Proposed Development

The applicant has requested a modification to the established "D" (Urban Protected Residential - One and Two Family Dwellings, Townhouses, etc.) District regulations to permit four dwelling units ranging in floor area from approximately 34.6 m<sup>2</sup> (372.4 sq. ft.) to approximately 45.9 m<sup>2</sup> (494.1 sq. ft.).

### o Order to Comply

The Building Department issued an Order to Comply on November 14, 1988 respecting the illegal use of the building as a four-family dwelling.

## APPLICANT

Eric Charles, owner.

## LOT SIZE AND AREA

- o 6.096 m (20.00 ft.) of lot frontage on Oak Avenue.
- o 27.432 m (90.00 ft.) of lot frontage on Birge Street; and,
- o 167.22 m<sup>2</sup> (1,800.00 sq.ft.) of lot area.

## LAND USE AND ZONING

	<u>EXISTING LAND USE</u>	<u>EXISTING ZONING</u>
<u>SUBJECT LANDS</u>	Four unit residential dwelling	"D" (Urban Protected Residential - One and Two Family, Townhouses, etc.) District
<u>SURROUNDING LANDS</u>		
to the north	One and Two family dwellings and light industrial	"D" (Urban Protected Residential- One and Two Family, Townhouses, etc.) District, and "J" (Light and Limited Heavy Industrial), modified

to the south,  
east and west

One and Two Family  
dwellings

"D" (Urban Protected  
Residential - One and Two  
Family, Townhouses, etc.)  
District

#### OFFICIAL PLAN

Designated "RESIDENTIAL", the proposal complies with the intent of the Official Plan.

#### NEIGHBOURHOOD PLAN

Designated "SINGLE and DOUBLE RESIDENTIAL" use on the approved Landsdale Neighbourhood Plan, the proposal does not comply with the intent of the Neighbourhood Plan. However, the Neighbourhood Plan should remain "SINGLE AND DOUBLE RESIDENTIAL" designation, if the application is approved, to reflect the long-term intended use for the property.

#### COMMENTS RECEIVED

o The following agencies have no comment or objection:

- LACAC;
- Hamilton Region Conservation Authority; and
- Traffic Department.

o The Building Department has advised as follows:

"The property has a lot area of 167.22 m<sup>2</sup> (1,800.0 sq.ft.) instead of the minimum required 270.0 m<sup>2</sup> (2,906.35 sq.ft.).

Due to the lack of information on the plans, it is not possible to determine the actual floor areas of each dwelling unit. It would appear that each dwelling unit does not provide the minimum 65 m<sup>2</sup> floor area. Each of the converted dwelling units contained within the building are classified as a 'Class A Dwelling Unit'.

Four dwelling units require a minimum of five parking spaces with manoeuvring space located on the lot. Only three parking spaces with no manoeuvring space may be provided and maintained on the lot.

An encroachment agreement with the Regional Engineering Department may be required for portions of the building on the Oak Avenue and Birge Street road allowance".

o The Engineering Department has advised as follows:

"That public watermains and combined storm and sanitary sewers are available to service the subject lands.

We do not anticipate any further road allowance widenings at this time.

As a condition of approval, we recommend that the applicant enter into an encroachment agreement with the City for the fire escape, building and steps which encroach into the road allowance.

The existing chain link fence within the Birge Street road allowance is contrary to the City Streets By-law, and remains at the risk of the applicant/owner".

### COMMENTS

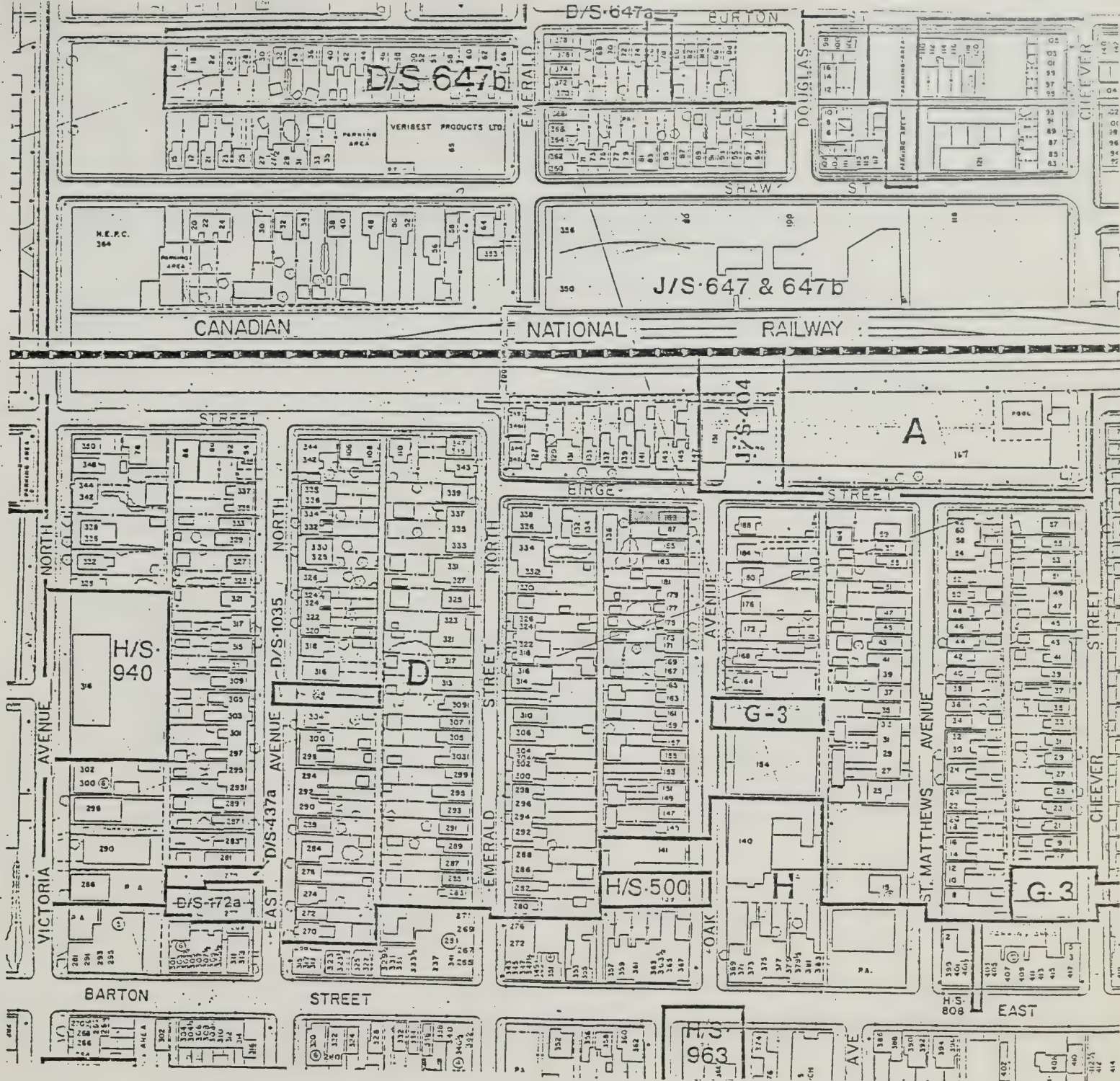
1. The proposal complies with the intent of the Official Plan.
2. The proposal conflicts with the intent of the approved Landsdale Neighbourhood Plan which designates the subject lands as "SINGLE AND DOUBLE RESIDENTIAL". However, the Neighbourhood Plan should remain "SINGLE AND DOUBLE RESIDENTIAL" designation if the application is approved, to reflect the long-term intended use for the property.
3. The proposal cannot be supported for the following reasons:
  - o it represents an intrusion of a multiple-unit dwelling into an area occupied primarily by one and two-family dwellings;
  - o approval of the application would establish an undesirable precedent and set the stage for other land owners to convert their dwellings for multiple occupancy;
  - o it represents an over-intensification of use, in that the property is substandard from the point that it does not meet the minimum lot area requirement for a converted dwelling in a "D" (Urban Protected Residential - One and Two Family Dwellings, etc.) District. The minimum lot area requirement is 270.0 m<sup>2</sup> (2,906.26 sq.ft.), whereas the property only has 167.22 m<sup>2</sup> (1,800.00 sq.ft.) of lot area. Furthermore, the applicant has advised that the proposed four dwelling units range in floor area from approximately 34.6 m<sup>2</sup> (372.4 sq. ft.) to a maximum of approximately 45.9 m<sup>2</sup> (494.1 sq. ft.), whereas a minimum 65.0 m<sup>2</sup> (699.65 sq. ft.) of floor area for a "Class A Dwelling Unit" is required; and
  - o adequate parking and manoeuvring space cannot be provided for the five off-street parking spaces required for the converted dwelling.

In this regard, the Building Department has advised that "only three parking spaces with no manoeuvring space may be provided and maintained on the lot".

### CONCLUSION

On the basis of the foregoing, the application should be denied.





# LEGEND



SITE OF THE APPLICATION

↑  
ZA 88-128





FOR ACTION

21.

REPORT TO:

SUSAN K. REEDER, SECRETARY OF THE  
PLANNING AND DEVELOPMENT COMMITTEE

FROM:

J. D. THOMS  
COMMISSIONER  
PLANNING AND DEVELOPMENT

DATE:

1989 FEBRUARY 20

COMM FILE:

DEPT FILES:

SA-88-20  
25T-88034

SUBJECT

Proposed Draft Plan of Subdivision "Wheten Court"

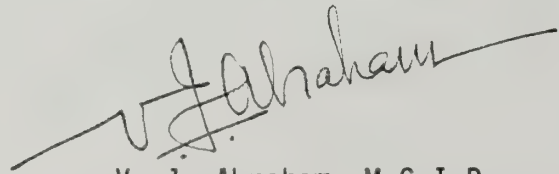
RECOMMENDATION

- a) That approval be given to Official Plan Amendment No. 72 to redesignate the subject lands from "Utilities" to "Residential", and that the City Solicitor be directed to prepare a by-law to amend the Official Plan for submission to the Regional Municipality of Hamilton-Wentworth.
- b) That approval be given to Application SA-88-20, City of Hamilton, owner, to establish a draft plan of subdivision on the north side of Mohawk Road East and the east side of Warren Avenue, subject to the following conditions:
  1. That this approval apply to the plan prepared by the Regional Department of Engineering, dated September 30, 1988 revised to show 24 lots.
  2. That the street be dedicated as public highway on the final plan.
  3. That the street be named to the satisfaction of the City of Hamilton and the Regional Municipality of Hamilton-Wentworth.
  4. That the final plan conform with the Zoning By-law approved under The Planning Act.
  5. That such easements as may be required for utility or drainage purposes be granted to the appropriate authority.
  6. That the owner provide the City of Hamilton with a certified list showing the net area and width of each lot and block in the final plan.
  7. That the owner shall erect a sign in accordance with Section XI of the subsequent Subdivision Agreement prior to the issuance of a final release by the City of Hamilton.

8. That the owner agree in writing to satisfy all requirements, financial and otherwise, of the City of Hamilton.
- c) That the subdivision agreement be entered into by the Corporation of the City of Hamilton and the owner to provide for compliance with the conditions of approval established by the Hamilton-Wentworth Region with respect to this application (SA-88-20), Corporation of the City of Hamilton, owner, proposed draft plan of subdivision, and that the City execute the agreement when the said conditions have been met and the City's share of the cost of installing municipal services has been approved by City Council.



J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development



V. J. Abraham, M.C.I.P.  
Director - Local Planning

#### FINANCIAL IMPLICATIONS

N/A

#### BACKGROUND

##### Owner

The Corporation of the City of Hamilton

##### Surveyor

M. A. Chidley, O.L.S., Hamilton, Ontario

##### Location

The lands, comprising 1.213 ha, are located on the north side of Mohawk Road East and the west side of Warren Avenue in the Balfour Neighbourhood, City of Hamilton.

##### Proposal

The owner proposes to subdivide the lands into 22 lots for single-family dwellings. The minimum lot size proposed has a width of 12.0m and an approximate area of 360m<sup>2</sup>.

### EXISTING DEVELOPMENT CONTROLS

Hamilton-Wentworth Official Plan - the lands are identified as "Existing Development" within the "Urban Policy Areas". The proposal complies.

City of Hamilton Official Plan - the lands will be designated "Residential" in an amendment to the Official Plan.

Zoning - the lands are zoned "C" District which permits the proposed development. The proposal complies.

Neighbourhood Plan - there is no approved plan for this neighbourhood. The proposal relates satisfactorily to adjoining residential development.

Niagara Escarpment - the lands are not within the Development Control Area, therefore the regulations do not apply.

### COMMENTS FROM CIRCULATION

The following agencies have advised that they have no comment or objection toward the proposal:

Ministry of Municipal Affairs;  
Ministry of Transportation;  
Ministry of the Environment (standard conditions for Lots 1 to 6);  
Ministry of Natural Resources;  
Ministry of Culture and Communications;  
Hamilton Region Conservation Authority;  
Ontario Hydro, Union Gas, Bell Telephone;  
City Traffic Department (subject to lot line changes);  
City Building Department.

The Hamilton-Wentworth Department of Engineering has submitted the following comments and recommendations:

- "1. It is recommended that Wheten Court be increased from a width of 15m to 20m with 9m radius transitions into the cul-de-sac bulb (see attached plan).
2. The owner must enter into Subdivision Agreements with both the City of Hamilton and the Region, prior to the development of any portion of these lands, if the land is sold. If retained, the agreements will not be required.
3. The submitted plan as prepared by M. A. Chidley, O.L.S. and dated August 4, 1988, is satisfactory to the Department of Engineering, subject to the above-noted comments and recommendations.



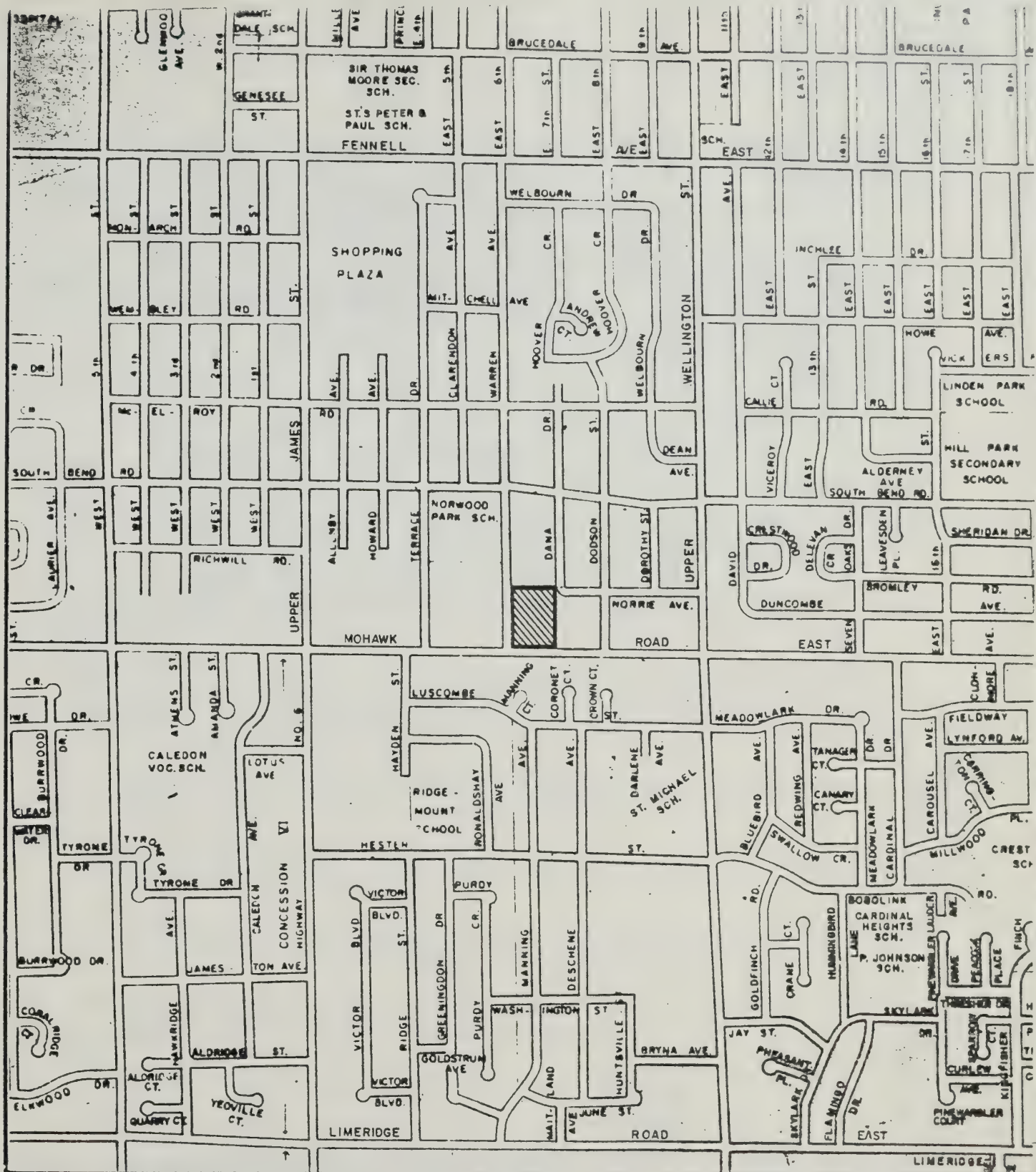
For Your Information

1. The development may be serviced for storm and sanitary sewers and watermains from existing Regional services.

COMMENTS

1. The conformity of the proposal with the Regional Official Plan and the Zoning By-law and the need for an amendment to the City Official Plan is noted.
2. Proposed Amendment No. 72 is a housekeeping Amendment which would appropriately redesignate the lands to reflect the proposed residential use of the land.
3. The proposal has been revised to utilize the available land in the best interests of the City.
4. The short distance of the cul-de-sac would justify a 18.0m width which is acceptable.
5. The Hamilton Fire Department finds the proposed street name unsuitable - it is too similar to "Whitton", an existing Hamilton street.
6. The requirements of the Ministry of the Environment can be implemented through the conditions of draft approval to be established by the Regional Municipality.

JLS/jd



Location Plan For

## WHETEN COURT

Regional Municipality of Hamilton-Wentworth  
Planning and Development Department

Legend



PROPOSED SUBDIVISION

North



Scale  
N. T. S.

Reference File No.  
25 T-88034

Date  
OCT. 17, 1988

Drawing No.



REG'D PLAN NO.

22 OCT 1964

DANA  
DRIVE

$$\begin{pmatrix} x \\ + \\ x \end{pmatrix}$$

NORRIE AVENUE

REG'D PLAN No. 848

МОНАХК РОАД

ROAD ALLOWANCE BETWEEN CONCESSIONS 5 and 6  
REGIONAL ROAD No. 115

NOTE :  
TOTAL PRESERVATION AREA = 1.613 ha

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE BOUNDARIES OF THE LANDS TO BE SUBDIVIDED AND THEIR RELATIONSHIP TO THE ADJACENT LANDS ARE CORRECTLY SHOWN

DATE 10/16/1996

M. A. CHIDLEY OLS

REGIONAL MUNICIPALITY OF HAMILTON - WENTWORTH

DEPARTMENT OF ENGINEERING

APPROVED

[illegible]

PLAN NO RB-H-373 SURVEYS

DRAFT PLAN  
WESTERN EDITION

BEING A PROPOSED SUBDIVISION

PART OF LOT 13, CONCESSION 5

GEOGRAPHIC TOWNSHIP OF BARTON

അനുഭവം

REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH

SCALE - 1 : 500

M. A. CHIDLEY, ONTARIO LAND SURVEYOR

1988

**METRIC:** DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.

RE. CHAPTER 379 R.S.O. 1960 SECTION 36 (2) THE PLANNING ACT

	MINERAL PIEDS WITH AVAILABLE
A	SHOWN ON PLAN
B	SHOWN ON PLAN
C	SHOWN ON PLAN
D	SHOWN ON PLAN
E	RESIDENTIAL (SINGLE FAMILY)
F	SHOWN ON PLAN
G	SHOWN ON PLAN
H	SHOWN ON PLAN
I	SHOWN ON PLAN
J	SHOWN ON PLAN
K	SHOWN ON PLAN
L	SHOWN ON PLAN
M	SHOWN ON PLAN
N	SHOWN ON PLAN
O	SHOWN ON PLAN
P	SHOWN ON PLAN
Q	SHOWN ON PLAN
R	SHOWN ON PLAN
S	SHOWN ON PLAN
T	SHOWN ON PLAN
U	SHOWN ON PLAN
V	SHOWN ON PLAN
W	SHOWN ON PLAN
X	SHOWN ON PLAN
Y	SHOWN ON PLAN
Z	SHOWN ON PLAN

OWNER'S AUTHORIZATION

THE CORPORATION OF THE CITY OF HAMILTON APPROVED  
M. A. CHIDLEY O. L. S. TO SUBMIT THIS DRAFT PLAN

DATE Sept. 30, 1956

Robert M. Moran  
Mayor  
for R. A. Smith  
City Clerk

**W. A. SHERROD**  
**CITY CLERK**

UPPER JAMES STREET

SOUTH BEND ROAD

**MUNHAM ROAD** **PERMITS ROAD TO USE**

KEY PLAN  
SCALE = 1 : 5000

UPPER WELLINGTON STREET

F O R   A C T I O N

22.

REPORT TO        SUSAN REEDER, SECRETARY  
                  PLANNING AND DEVELOPMENT COMMITTEE

FROM:           J. D. THOMS, COMMISSIONER  
                  PLANNING AND DEVELOPMENT DEPARTMENT

DATE: 1989 March 8  
COMM FILE:  
DEPT. FILE: DA-88-48  
              ZA-87-48  
              Mewburn  
              Neighbourhood

SUBJECT:

Site Plan Control Application DA-88-48 and modification to Zoning Application ZA-87-48 for a commercial development at 1400 Upper James Street.

RECOMMENDATION

- (1) That approval be given to Site Plan Control Application DA-88-48 by Bayfield Green Development Company, owner of lands at 1400 Upper James Street for a commercial development for a White Rose Nursery, Cashway Building Centre, restaurant and retail stores subject to the following:
- (a) finalization of the By-law for the proposed development incorporating the approvals of Zoning Application ZA-87-48;
  - (b) modification to the plans related to notes, grading and dimensions as marked in red on the plan;
  - (c) submission of a revised site plan to the satisfaction of the Director of Traffic Services to resolve truck manoeuvring details;
  - (d) dedication to the Region of Hamilton-Wentworth, for a road widening of approximately 3.048 m along Upper James Street;
  - (e) provision on the plan to include a traffic sign schedule to the satisfaction of the Director of Traffic Services;
  - (f) provision of an appropriate agreement to provide for the sewer easement along and within the northerly portion of the subject lands, to the satisfaction of the Commissioner of the Hamilton-Wentworth Engineering Department;
  - (g) provision of an appropriate agreement to provide for construction and dedication of the pedestrian walkway along and within the northerly portion of the subject land, to the satisfaction of the Commissioner of the Hamilton-Wentworth Engineering Department;
- and further;



2. That in regard to Zoning Application ZA-87-48, the following resolution be forwarded to City Council for approval;

That Section 9 of the Third Report for 1988 of the Planning and Development Committee to City Council, approved on 1988 February 9th, in regard to Zoning Application ZA-87-48 by Bayfield Green Development Company, owner of lands at 1400 Upper James Street, be amended as follows:

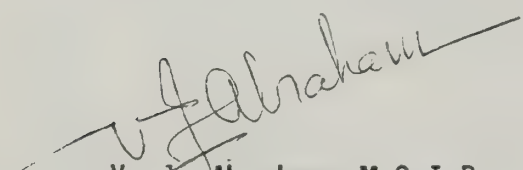
- A) to delete clauses (B)(f)(ii)(3) and (4), and add the following clauses in their place:

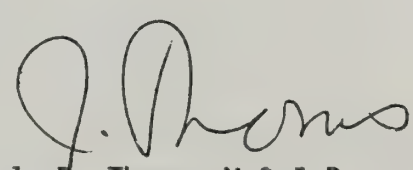
- (B)(f)(ii)(3)(i) No part of a side or rear yard used for outdoor storage area "A" as shown on Schedule "B", attached herewith and marked as APPENDIX "I", shall be situated less than 9.1 metres from the adjoining westerly lot line, less than 7.6 metres from the adjoining southerly lot line, and less than 3.0 m from the adjoining northerly lot line.
- (B)(f)(ii)(3)(ii) No part of a side yard used for outdoor nursery area "B" as shown on Schedule "B"; attached herewith and marked as APPENDIX "I", shall be situated less than 3.0 metres from the adjoining westerly and southerly lot lines, and less than 4.6 metres from the adjoining easterly lot line.
- (B)(f)(ii)(4) The total area used for outside storage area "A" as shown on Schedule "B", attached herewith and marked as APPENDIX "I", shall not exceed 19% of the lot area.

- B) To repeal Schedule "B" and replace it with a new Schedule "B", attached herewith and marked as APPENDIX "I".

#### EXPLANATORY NOTE

The changes are required to clarify and designate outside storage area "A" and outside nursery area "B" as part of the By-law, and to revise Schedule "B" to show the various features of the development.

  
V. J. Abraham, M.C.I.P.  
Director of Local Planning

  
J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development Department

## BACKGROUND

The proposed commercial development is composed of three structures on the property. The existing restaurant located at the south-east corner of the property will be retained. The new structures to the rear of the lot will provide approximately 2,043 m<sup>2</sup> for a White Rose Nursery with an outdoor nursery area of approximately 1,802 m<sup>2</sup>; a Cashway Building Centre of approximately 2,787 m<sup>2</sup> with an outdoor storage area of approximately 6,469 m<sup>2</sup>; and retail stores with an area of approximately 1,515 m<sup>2</sup>. A total of 275 parking spaces and 5 loading spaces are provided for the development. Landscaped planting strips and visual barriers are provided along the south, west and north boundaries, and a public walkway along the north boundary.

The Traffic Department has advised that the plans require clarification as to "Traffic signs" and, turning and manoeuvring area for the southerly loading space and the loading space at the rear of the retail stores (see attached letter). A revised plan should be provided to resolve these points.

The comments of the Hamilton-Wentworth Engineering Department are summarized as follows (see attached letter):

- a) a road widening of approximately 3.048 m (10 ft.) is required to be dedicated to the Region;
- b) clarification is required on the grading plan related to culverts, existing signs and parts on the road allowance, curbing and grades;
- c) appropriate agreements are required to establish the sewer easement and related costs; and
- d) appropriate agreements are required for the applicant to construct the public walkway along the northerly property limit at his own expense, and to dedicate the walkway to the City of Hamilton.

The Building Department has indicated that the proposed development must comply with the proposed By-law for the subject land.

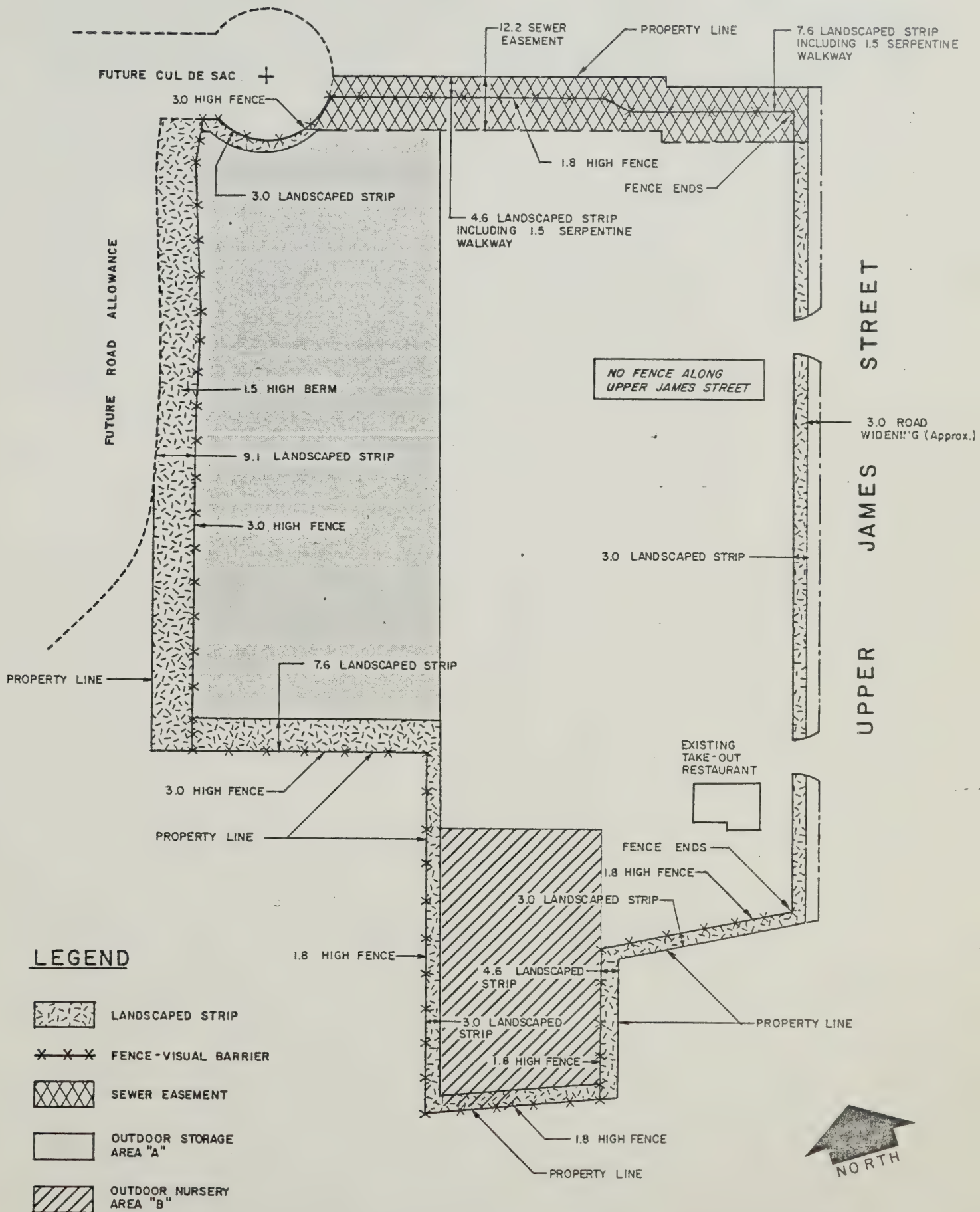
The Planning and Development Department has the following comments:

- a) Modifications are required to the plans related to traffic signs, dimensions, grades and culverts as marked in red on the plans;
- b) The development is subject to finalization of the By-law;
- c) The submitted development plans have indicated that the proposed By-law should be modified to clearly identify the location and height of all fencing, the designation of the outside storage area and the outside nursery area, and the required rear and side yards. The approved resolution of City Council approved on 1988 February 9th, should therefore be modified accordingly;
- d) Council had also indicated that the amending By-law not be forwarded to City Council for adoption until such time as the site plan is approved by the Planning and Development Committee;

- e) A number of meetings have taken place with the area residents, the applicant, the Alderman of the Ward and Department staff. The overall project plans were discussed, but details of the walkway along the north boundary line were the main concern. Although details are provided on the submitted plans, it is recommended that the abutting property owners be involved in the preparation of the final walkway plans and agreements, to be co-ordinated by the Hamilton-Wentworth Engineering Department;
- f) The Barton Stone United Church has advised that there appears to be a discrepancy in the property line location abutting their property and the proposed walkway. The discrepancy appears to be minor and involves approximately 1.0 to 1.5 m and does not have any detrimental impact on the proposed walkway or development. Discussions with the Regional Surveyor's office has indicated that the discrepancy will be resolved as a private matter when the subject property is registered with the Land Titles office.

JPS/ma  
WP0415P



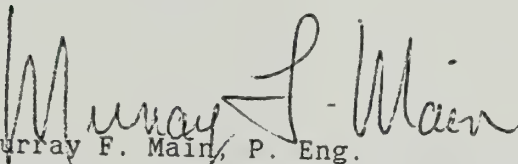






We approve of the location of the access in principle, but the applicant should be advised that he must apply to the Traffic Department for a Driveway Approach Approval, the detailed design of which will be prepared by this Department. Four copies of the approved plan must be submitted. These plans should accurately indicate the location of existing curbs and all street fixtures which may effect driveway location ie. poles, fire hydrants, trees, etc.

Yours truly,

  
Murray F. Main, P. Eng.  
Director of Traffic Services

RK/WC/ca

Attach.



THE REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH

Department of Engineering  
71 Main Street West, Hamilton, Ont. L8N 3T4 (416) 526-4170


I.D.#0247D(30)

Refer to File No. E220-1303  
Attention of F. Rysanek  
Your File No. DA-88-48

September 20, 1988

TO: J. Sakala, Planning and Development  
FROM: K. A. Brenner, Planning Manager, Engineering Department  
RE: Site Plan Control Application DA-88-48 concerning  
the property at 1400 Upper James Street

We have reviewed this application and wish to inform you that, subject to our previous comments on this development we have no objection to this application. However, our previous concerns, respecting grading discrepancies in particular, must be addressed.

  
FAR:jd  
FP

PLANNING & DEVELOPMENT LOCAL PLANNING DEPARTMENT			
FILE NO.	SEP 22 1988		
TO	DATE	INITIALS	ACT
DIR.			
ASST. DIR.			
PLANNING			
DEVELOPMENT			
ENGINEERING			
STAFF			
ADMIN.			
FILED			
STAMP			
DATE			
ADMIN.			

*Handwritten notes on stamp:*  
DPS 2-4  
JL  
KB



## THE REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH

Department of Engineering  
71 Main Street West, Hamilton, Ont. L8N 3T4 (416) 526-4170

LOCAL PLANNING BRANCH

JUN 09 1988

TO	STAFF	INIT.	INFO.	ACT.
DIR.				
NEIGH.				
DEV.				
E.S.U.D.				
STAFF				
CART.				
ADMIN.				

ID#0068D(50)

June 8, 1988

TO: J. Sakala, Planning and Development

FROM: K. A. Brenner, Planning Manager

RE: Site Plan Control Application No. DA 88-48, for a commercial plaza at 1400 Upper James Street, Hamilton

We wish to submit the following comments on this development: -

The designated road allowance width of Upper James Street is 36.58 m (120 feet). In accordance with this designation, we recommend that sufficient lands be dedicated to the Region as a condition of site plan approval, to establish the property line 18.29 m (60 feet) from the centre line of the original Upper James Street road allowance. According to our records, the Region previously acquired a 17 feet (5.18 m) widening through Miscellaneous Plan No. 355 and an additional  $\pm$  3.048 m (10 feet) of land is still required. All setbacks are to be taken from the widened limits of Upper James Street.

There is a number of items on the site plan within the Upper James Street road allowance which should be addressed as follows:

- 1) The removal of the existing culvert and the filling of the stream channel must be approved by this office. The culvert removal, if approved, must be such that the ground is reinstated to the same elevation as the adjacent road allowance.
- 2) The existing sign and posts must be removed from the Upper James Street road allowance, as widened.

Continued ...



Continued ...

- 3) The existing well within the road allowance should be filled with adequate materials, etc.
- 4) The existing light standard must be relocated outside of the Upper James Street road allowance, as widened.
- 5) Any asphalt or curb removed should be graded at the same elevation as the adjacent lands.

As a requirement of any work within the road allowance, as widened, it is the responsibility of the applicant to contact all utilities at 527-7977 before initiating any work.

The geometric design criteria of the accesses and their relation to properties on the east side of Upper James Street are being investigated by the City of Hamilton Traffic Department.

The approved Mewburn Neighbourhood plan designates that the rear of these lands be used for single and double family housing and residential streets. The exact limits or details of commercial depth must be specified in the Zoning By-law passed on Zoning Application 87-48. The depth of the commercial depth for this application appears to exceed that shown on the approved neighbourhood plan.

We recommend, as a condition of development approval, that lands designated for residential and street use be excluded from this site plan approval.

We note that the proposed sewer easement appears to be partly on the cemetery property. This is not permissible. The plan must be revised to show that this easement is completely contained on the property subject to this application. Furthermore, the applicant should check with the Planning Department, the location of the future cul-de-sac to ensure that it is compatible with the sewer easement.

Low illuminated traffic signs must be approved by the City of Hamilton Traffic Department through the Access Permit or Approach Approval. Care should be taken that these signs do not obstruct the visibility of motorists and pedestrians in the road allowance, as widened.

Continued ...

- page 3 -  
June 8, 1988

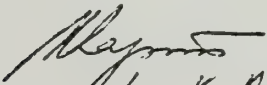
Continued ...

We also recommend that all fencing be recessed 3 m back from the Upper James Street road allowance, as widened or alternatively, fencing within 3 m of the widened street line does not exceed a height of 0.80 m above the centre line elevation of Upper James Street.

Landscaping within the access areas should be placed so as not to obstruct motorist visibility. Trees adjacent to the accesses should be deleted.

We understand that the City Traffic Department will address the proximity of the parking aisle entry to the street line (access).

The grading plan, as revised, is satisfactory.

  
for K. A. Brenner  
FAR:tlj

#1



CA40NHBL A05  
C5IP4

E. A. SIMPSON  
CITY CLERK

K. E. AVERY  
DEPUTY CITY CLERK



MS. C. DEITER  
URBAN MUNICIPAL LIBRARIAN

CITY HALL  
HAMILTON, ONTARIO  
L8N 3T4

## THE CORPORATION OF THE CITY OF HAMILTON

OFFICE OF THE CITY CLERK

1989 March 23rd

### NOTICE OF MEETING

Planning and Development Committee  
Wednesday, 1989 March 29th  
1:00 o'clock p.m.  
Room 233, City Hall

  
Susan K. Reeder  
Secretary

SKR:dbm

ZONING APPLICATIONS WILL BE HEARD IN THE COUNCIL CHAMBERS

### A G E N D A

1. Minutes of the meeting held Wednesday, 1989 March 15th.

### BUILDING COMMISSIONER

2. Demolition Permit Applications.

### CHIEF ADMINISTRATIVE OFFICER

3. Recommendations - Task Force to review the Mandate and Structure of the Hamilton Harbour Commissioners.







DIRECTOR OF LOCAL PLANNING

4. Draft Plan of Subdivision SA 88-26, for property on the west side of Upper Wentworth Street, north of Rymal Road East; Barnstown Neighbourhood.
5. Site Plan Control Application DA-88-60, for lands at 64 Ewen Road; Ainslie Wood Neighbourhood.
6. Site Plan Control Application DA-88-99, for lands at 1645 Upper James Street; Allison Neighbourhood.
7. Delegation - Mr. Zygmund Cwierzdzinski re: Site Plan Control Application DA-88-126, for lands at 568 James Street North.
8. Housing Intensification Study - Authorization for Survey.
9. Central Area Plan Implementation Committee - Terms of Reference.

ZONING APPLICATIONS

COUNCIL CHAMBERS

3:00 o'clock p.m.

10. Zoning Application 88-122, for land in the area south of Rymal Road West, and west of Christie Street; Kennedy East Neighbourhood.
11. Zoning Application 88-132, for the southerly part of property municipally known as 294-298 Lake Avenue North; Grayside Neighbourhood.
12. Zoning Application 88-110, for property at 1880 Main Street West; Ainslie Wood West Neighbourhood.
  - (a) Letter of Submission - J. Springstead, 1928 Main Street West, #217.



3:15 o'clock p.m.

13. City Initiative 88-L, for property at 2825 King Street East; Greenford Neighbourhood.  
  
(a) Letter of Submission - Mr. & Mrs. Pearson, 23 Owen Place.
14. Zoning Application 88-28, for property at 1002 West Fifth Street; Gourley Neighbourhood.

3:30 o'clock p.m.

15. Zoning Application 89-03, for property at 13 Cannon Street East; Central Neighbourhood.
16. Zoning Application 89-01, for property at 1565 Upper James Street; Ryckman's Neighbourhood.

3:45 o'clock p.m.

17. Zoning Application 89-05, for property at 10 Herkimer Street; Durand Neighbourhood.  
  
(a) Letter of Submission - H. T. Brown, 34 Daffodil Crescent, Ancaster.  
  
(b) Mr. & Mrs. White, 250 James Street South.  
  
(c) M. L. Tanner, 201-45 Charlton Avenue West.  
  
(d) J. P. Van Ryn, 370 Main Street East.  
  
(e) Mr. & Mrs. Steller, 10 Herkimer Street.  
  
(f) D. R. Walker, 62 Enmore Drive, Ancaster.  
  
(g) Area Director, The Canadian Red Cross Society.
18. Other Business.
19. Adjournment.





Wednesday, 1989 March 15  
1:00 o'clock p.m.  
Room 233, City Hall

1.

The Planning and Development Committee met.

There were present: Alderman J. Smith, Chairman  
Alderman D. Christopherson  
Alderman W. McCulloch  
Alderman M. Kiss  
Alderman B. Hinkley  
Alderman H. Merling  
Alderman D. Ross

Regrets: Mayor Robert M. Morrow  
Alderman F. Lombardo, Vice-Chairman

Also present: Alderman V. Ago  
Alderman T. Murray  
Mr. L. Sage, Chief Administrative Officer  
Mr. E. Matthews, City Treasurer  
Mr. J. Thoms, Commissioner of Planning and Development  
Mr. V. Abraham, Director of Local Planning  
Mr. B. Allick, Building Department  
Mr. K. Brenner, Regional Engineering Department  
Mr. L. King, Building Department  
Mr. J. Robinson, Community Development Department  
Mr. M. Watson, Real Estate Division  
Ms. J. McNeilly, Community Development Department  
Mr. K. Beattie, Treasury Department  
Mr. J. Roy, M.B.A. Student, Treasury Department  
Mr. G. Robis, Building Department  
Mr. B. Pooler, Building Department  
Mr. E. Kowalski, Director of Community Development  
Mr. B. McCammon, Regional Planning Department  
Mr. R. Karl, Traffic Department  
Mr. J. Sakala, Planning Department  
Mr. D. Godley, Planning Department  
Mr. M. Sabelli, Planning Department  
Mr. B. Janssen, General Manager, Municipal Non-Profit  
(Hamilton) Housing Corporation  
Ms. N. Chapple, Planning Department  
Mr. J. Schwarz, Regional Planning Department  
Mr. P. Mallard, Planning Department  
Ms. J. Hickey, Planning Department  
Mrs. Susan K. Reeder, Secretary

The Committee was in receipt of a memorandum from the City Treasurer dated 1989 March 10 respecting the 1989 Current Budget. The Committee was also in receipt of a memorandum from the City Treasurer dated 1989 March 10 respecting the 1989 Current Budget's Estimates and Ranked Packages.

1989 Current  
Budget.

The City Treasurer addressed the Committee on this matter and outlined the process he recommends for review by Standing Committees in an effort to reduce the Budget's Estimates. The Committee then discussed this matter in great detail.

The Committee then APPROVED the following:

That the following packages BE DELETED from the 1989 Budget Estimates:

- (a) Planning and Development - Technical/Cartographic Services - Background Studies.
- (b) Building - Two Inspectors, Stenographer III (Licence Applications).
- (c) Planning and Development - Staff Training.
- (d) Planning and Development - Technical/Cartographic Services - Plan Applications.

Minutes -  
1989 March 1.

The Committee was in receipt of the minutes of their meeting held Wednesday, 1989 March 1 and APPROVED these minutes.

Demolition Permit  
Application

The Committee was in receipt of a report from the Building Commissioner dated 1989 March 8 respecting a Demolition Permit Application and APPROVED the following:

That the Building Commissioner BE AUTHORIZED to issue a demolition permit for the following property:

(a) 82 Colbourne Street.

Alderman  
Christopherson -  
budget decision  
re: licence  
applications.

At this point Alderman Christopherson spoke to the Committee following a brief absence from the room, on the decision of the Committee respecting the Budget Estimate Packages.

He expressed concerns at the actions of the Committee in deleting the positions within the Building Department respecting Licence Applications. He cautioned that deleting the staff would mean that inspections could not be carried out and he asked that the Legislation Committee be requested to amend the By-law to take out the responsibility of the City carrying out these inspections.

The Committee took NO ACTION on this matter.

Review of the  
functions of the  
Building  
Department.

The Committee discussed a matter of Reviewing the Functions of the Building Department which had been generally discussed during Budget deliberations.

The Chief Administrative Officer spoke briefly to this item and indicated some of the areas that he sees changes being made.

Following discussion on this matter by the Committee it was APPROVED:

That the Chief Administrative Officer report back to the Planning and Development Committee on the process to be used in Reviewing a Possible Restructuring of the City's Building Department.

Improvements to  
Carter Park.

The Committee RECEIVED a Delegation from the Corktown/Stinson Neighbourhood Association with respect to Improvements to Carter Park.

Alderman Agro addressed the Committee on this matter as well as Alderman McCulloch as the Ward representatives. Ms. McNeilly, spoke from the Planning and Development Department on the plans proposed by F. Basciano, Landscape Architect. Mr. Hal Costie, spokesperson for the Delegation addressed the Committee.

Following some discussion on this matter by the Committee the following was APPROVED and forwarded to the Parks and Recreation Committee for consideration:

- (a) That approval be given to implement the improvements at Carter Park recommended by the Corktown/Stinson Neighbourhood Association and outlined in an conceptual plan of the Priority One Park (Carter Park) prepared by F. Basciano, Landscape Architect; and
- (b) That additional funding required over and above the balance of O.N.I.P. Funds remaining be derived from the Park's Dedication Fund.

The Committee was in receipt of a report from the Director of Community Development dated 1989 March 7 respecting a Proposed Budget and Schedule of Payments for Jamesville Business Improvement Area.

Proposed Budget  
and Schedule of  
Payments -  
Jamesville B.I.A.

The Committee APPROVED the following:

- (a) That the 1989 Operating Budget of the Jamesville B.I.A. BE APPROVED in the amount of twenty-nine thousand, six hundred and twenty dollars (\$29,620.); and,
- (b) That the City Solicitor BE HEREBY AUTHORIZED and directed to prepare the requisite By-law pursuant to Section 217, The Municipal Act, R.S.O., 1980, to levy the 1989 Budget as reference in (a) above; and,
- (c) That the Schedule of Payments for 1989 be as follows:

\$15,000.	May
\$ 7,620.	August
\$ 7,000.	November -

The Committee was in receipt of a report from the Director of Community Development dated 1989 March 3 respecting a New Member to the Board of Management (1989-1991) for the International Village B.I.A.

New member,  
Board of  
Management,  
International  
Village B.I.A.

The Committee APPROVED the following:

- (a) That By-law 87-229, amending By-law 86-212, appointing the International Village B.I.A. Board of Management BE AMENDED to add the following name:

Danny Phillips	Phillips Printing
	318 King Street East

- (b) That the City Solicitor BE AUTHORIZED and directed to amend By-law 87-229 pursuant to (a) above.

The Committee was in receipt of a report from the Director of Property dated 1989 March 1 respecting 393 Sherman Avenue North - Alpha Enclave (West).

393 Sherman  
Avenue North -  
Alpha Enclave  
(West)

The Committee APPROVED the following:

- (a) That the residential property located at 393 Sherman Avenue North in the Alpha Enclave (West) which was approved for acquisition by City Council on 1987 July 28, BE ACQUIRED THROUGH EXPROPRIATION; and
- (b) That the City Solicitor BE DIRECTED to take the appropriate action; and
- (c) That the City Clerk BE AUTHORIZED and directed to:
  - (i) Give Notice of the City's application as expropriating Authority, to all owners, registered owners and tenants (as defined in The Expropriations Act) of the above residential property in the Alpha Enclave (West) that is located within an industrial zone, for approval to expropriate in accordance with Section 34(8) of The Planning Act; and
  - (ii) Advertise the Notice of the City's Application in a newspaper as required by The Expropriations Act; and
  - (iii) Sign and receive the said Application for Approval to Expropriate.
- (d) All related costs to the acquisition and expropriation to BE CHARGED to Account CF 5590 308750001.



NOTE: City Council on 1988 November 8 in adopting Item #4 of the 22nd Report of the Planning and Development Committee, approved the expropriation of all the remaining residential properties required for the Alpha Enclave (West) project.

On 1988 November 16, a negotiated Option to Purchase document covering the purchase of 393 Sherman Avenue North was forwarded to City Council for approval. City Council on 1988 December 13 approved the purchase of same in adopting Item #4 of the First Report of the Planning and Development Committee. Due to title problems, the City Solicitor was unable to complete the purchase of 393 Sherman Avenue North as scheduled on 1988 February 8. The current owner is unable to give the City clear title.

In view of the above, the only method open to the City to acquire this property would be through expropriation.

Sheraton Hotel -  
Additional legal  
assistance.

The Committee was in receipt of a report from the Chief Administrative Officer dated 1989 March 10 respecting the Sheraton Hotel and the obtaining of additional legal assistance in the preparation of the documentation required for the Sheraton Hotel transfer. General discussion then ensued on the status of this matter and the following recommendation was APPROVED:

That the firm of Weir & Foulds BE RETAINED to assist Mr. D. Powers of the Legal Department in the completion of documentation necessary to finalize the transaction between Lakeview Development Limited and GGS Co. Limited as it pertains to the City of Hamilton's interest in the Sheraton Hotel.

NOTE: For the information of the members of City Council, the Planning and Development Committee at its meeting held Wednesday, 1989 March 15, directed the Chief Administrative Officer to provide a report to them on the current status of the Sheraton Hotel transfer of ownership. The Committee also requested that an investigation be undertaken on the possibility of Lakeview being required to pay back a portion of amounts they have earned over the years (Capital gains), as a partial result of up-front funds paid by the City to Lakeview at the inception of the Sheraton Hotel project for such consideration as parking.

When this report is presented to the Planning and Development Committee, all members of City Council will be invited to attend.

Settlement of  
Expropriation -  
14 Market Square

The Committee was in receipt of a report from the City Solicitor dated 1989 February 27 respecting Settlement of Expropriation of 14 Market Square.

The Committee APPROVED the following:

That the City pay the sum of \$40,000., plus interest plus legal costs, to settle the expropriation of 14 Market Square.

NOTE: This matter arises out of the City of Hamilton's expropriation of 14 Market Square in 1968. The City's legal consultant at Weir & Foulds has negotiated a settlement of the market value for this expropriation with the former owner's lawyer for (a) \$65,000., minus the \$25,000. paid when the expropriation plan was registered, (b) interest at the rate of 6% from 1968 December 31, (c) plus reasonable legal costs.

Heritage Permit  
alterations to  
252, 262 and 268  
James Street  
South.

The Committee was in receipt of a report from the Secretary of the Local Architectural Conservation Advisory Committee dated 1989 February 23 respecting Heritage Permit for alterations to 252, 262 and 268 James Street South.

The Director of Local Planning advised that it would be best to table this matter in order that this Building Application can be processed first.

The Committee then APPROVED the following:

That the Heritage Permit Application for property at 252, 262 and 268 James Street South BE TABLED in order that the Building Department can review the Building Permit Application for this same property first.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 March 7 respecting the Red Hill Expressway - Local Street Network, Red Hill Neighbourhood.

The Committee APPROVED the following:

That the Planning and Development Department BE AUTHORIZED to hold a joint Public Meeting with the Freeway Project Director to discuss the Red Hill Expressway - Local Street Network, Red Hill Neighbourhood.

The Committee was in receipt of a report from the Chairman of the Urban Design Committee dated 1989 March 7 respecting Re-confirmation of the Urban Design Committee.

The Committee APPROVED the following:

That the Urban Design Committee BE RE-CONFIRMED.

The Committee was in receipt of information respecting the St. Elizabeth Village East Site Plan Control Application DA-86-74.

Mr. K. Brenner of the Regional Engineering Department referred to a revised recommendation respecting this matter and the Secretary distributed this recommendation for the Committee's perusal.

Mr. T. Whelan, Solicitor for the St. Elizabeth Village spoke to the Committee and requested approval to him filing an undertaking on behalf of the Society under seal for completion of the agreement referred to in the recommendation of staff.

Some discussion ensued on this matter and Mr. P. Barkwell of the City Solicitor's Department commented on this.

The Committee then APPROVED the following:

- (a) That the St. Elizabeth Society BE REQUIRED to enter into an agreement, to be registered on title of the land, with the City of Hamilton for storm sewer channels located on the lands of St. Elizabeth Village and described as Part 1 of Plan 62R-9910 and Parts 1 to 18 inclusive of Plan 62R-9911. The easement agreement is to be prepared to the satisfaction of the City Solicitor and shall include the following:

- (i) To acknowledge that the Parts described above are recognized as the floodplain;
- (ii) To acknowledge that the owner of the land shall maintain the watercourse;
- (iii) To acknowledge that the owner shall not construct or place any buildings or structures within the floodplain;
- (iv) To acknowledge that any improvements by the owner or plantings and landscaping within the floodplain are at the owner's own risk; and,
- (v) That the owner acknowledge that the drainage design by Parker Consultants, and subsequently constructed, will accommodate the increase in waterflow resulting from upstream development in Hamilton.

Red Hill Expressway - Local Street Network, Red Hill Neighbourhood.

Reconfirmation Urban Design Committee.

St. Elizabeth Village East Site Plan.

- (b) That a Corporate undertaking, under seal, from the St. Elizabeth Society to enter into the above-noted Agreement BE ACCEPTED.

NOTE: Acceptance of this undertaking will allow the Building Commissioner to issue Building Permits.

Provincial/  
Municipal  
Housing  
Agreement.

The Committee was in receipt of a recommendation from the Director of Community Development dated 1989 March 8 respecting a Provincial/Municipal Housing Agreement.

Alderman Ross spoke on his involvement with this issue to date and Mr. J. Robinson of the Community Development Department answered questions from the Committee.

Alderman Christopherson requested that when an Agreement is ready that a Public meeting be held before finalizing this matter. He also requested that a meeting of politicians of other cities be set up to share experiences with this programme.

Alderman Ross indicated that tentative steps were taken to set up such a politicians meetings and plans can be resurrected to do so.

Mr. J. Robinson of the Community Development Department indicated that when a meeting is set up on this agreement that portions of this should be held IN-CAMERA since specific sites would be mentioned.

The Committee then APPROVED the following:

That the Director of Community Development BE HEREBY AUTHORIZED to enter into negotiations with the Ministry of Housing, with the aim of establishing a Provincial/Municipal Housing Agreement.

NOTE: The contents of the proposed Agreement will be presented to the Planning and Development Committee and City Council prior to submission to the Province of Ontario.

Council Chambers.

The Committee then adjourned to the Council Chambers to hear Zoning Applications.

Amended ZA 88-104 - south of Rymal Road East and east of the proposed extension of Upper Gage Avenue.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 March 8 respecting an Amended Zoning Application 88-104, for lands in the area south of Rymal Road East and east of the proposed extension of Upper Gage Avenue.

The Committee APPROVED the following:

That APPROVAL be given to amended Zoning Application 88-104, 779573 Ontario Inc. (Clemente Valeri), owner, for a change in zoning from "AA" (Agricultural) District to "R-4" (Small Lot Single-Family Detached) District (Block "1"), and from "C" (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District (Block "2"), for lands in the area south of Rymal Road East and east of the proposed extension of Upper Gage Avenue, as shown on the attached map marked as APPENDIX "A", on the following basis:

- (a) That the lands described as Block "1" be rezoned from "AA" (Agricultural) District to "R-4" (Small Lot Single-Family detached) District;
- (b) That the lands described as Block "2" be rezoned from "C" (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District;
- (c) That the City Solicitor be directed to prepare a by-law to amend Zoning By-law No. 6593 and Zoning District Map E-49E for presentation to City Council;
- (d) That the proposed changes in zoning are in conformity with the Official Plan for the Hamilton Planning Area.



NOTE: The purpose of the by-law is to provide for the following changes in zoning of lands located in the area south of Rymal Road East and east of the proposed extension of Upper Gage Avenue.

- (a) Block "1": Change from "AA" (Agricultural) District to "R-4" (Small Lot Single-Family Detached) District.
- (b) Block "2": Change from "C" (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District.

The effect of the by-law is to permit development of the subject lands for small lot single-family detached dwellings in accordance with a draft plan of subdivision.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 March 2 respecting Revision to the Draft Approved Plan of Subdivision "Lillian Heights".

The Committee APPROVED the following:

That APPROVAL be given to amend the draft approved subdivision now owned by Lillian Heights Limited, under Regional File No. 25T-79018, City of Hamilton File No. SA-79-09 by changing condition (a) as follows:

- (a) That this approval apply to the plan prepared by A. J. Clarke and Associates, dated 1987 March 24, revised to show 174 lots, 3 blocks for 58 townhouse units, 2 blocks for 216 medium density apartment units, 10 blocks for development with adjacent land, two blocks for sewer easements, one block for open space purposes, one block as a walkway and five blocks for 0.3m reserves.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 March 8 respecting Zoning Application 88-114, for property at the rear of 1412 Upper Gage Avenue fronting onto Elmore Drive.

Mr. Strowbridge Jr., spoke on behalf of his father and expressed concerns that this development would cause flooding on their property. He added that they would not be opposed if a catch-basin were included in the application.

The agent for the applicant then spoke to the Committee on this matter.

The Committee then APPROVED the following recommendation and added a clause respecting that the grading plan must be to the satisfaction of the Regional Engineer:

- (A) That amended Zoning Application 88-114, Frank Bottega and Jackueleine Bottega, owners, requesting a changed in zoning from "L-mr-1" (Planned Development-Multiple Residential) District to "C" (Urban Protected Residential, etc.) District for property located at the rear of 1412 Upper Gage Avenue fronting onto Elmore Drive, as shown on the attached map marked as APPENDIX "B" BE DENIED for the following reason:

- (a) It would be inappropriate to leave the existing single-family dwelling located at 1412 Upper Gage Avenue in the "L-mr-1" (Planned Development-Multiple Residential) District, in that the property is not suitable for inclusion with adjoining lands for planned multiple residential development.

- (B) That APPROVAL be given to amended Zoning Application 88-114, Frank Bottega and Jackueleine Bottega, owners, requesting a change in zoning from "L-mr-1" (Planned Development-Multiple Residential) District to "C" (Urban Protected Residential, etc.) District for property located at 1412 Upper Gage Avenue, as shown on the attached map marked as APPENDIX "C" on the following basis:

Revision to  
draft approval  
of Subdivision  
"Lillian Heights"

ZA 88-114,  
rear of 1412 Upper  
Gage Avenue  
fronting onto  
Elmore Drive.



- (a) That the subject lands be rezoned from "L-mr-1" (Planned Development-Multiple Residential) District to "C" (Urban Protected Residential, etc.) District;
- (b) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593 and Zoning District Map E-38-C for presentation to City Council;
- (c) That the proposed change in zoning is in conformity with the Official Plan for the Hamilton Planning Area;
- (d) That the Eleanor Neighbourhood Plan be amended by redesignating the subject lands from "Low Density Apartments" to "Single and Double" Residential;
- (e) The Schedule "B" to By-law No. 79-275, as amended by By-law No. 87-223, respecting Site Plan Control be amended by adding the subject lands thereto and that in this regard, the applicant be required to submit only a grading plan to the satisfaction of the Regional Engineer.

NOTE: The purpose of the By-law is to provide for a change in zoning from "L-mr-1" (Planned Development-Multiple Residential) District to "C" (Urban Protected Residential, etc.) District for property located at 1412 Upper Gage Avenue.

The effect of the By-law is to establish appropriate zoning for the existing dwelling fronting on Upper Gage Avenue, and permit the severance of the rear portion of the property to create a building lot for a single-family detached dwelling fronting onto Elmore Drive.

Amended ZA 88-105, 252 Gibson Avenue North.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 March 10 respecting Amended Zoning Application 88-105, for property at 252 Gibson Avenue North.

The Committee APPROVED the following:

That APPROVAL be given to an amended Zoning Application 88-105, D. Nocciolino, owner, requesting a modification to the established "D" (Urban Protected Residential - One and Two-Family Dwellings, Townhouses, etc.) District regulations for property at 250 Gibson Avenue North (Block "1"), and a further modification to the "D" District regulations for property at 252 Gibson Avenue North (Block "2"), as shown on the attached map marked as APPENDIX "D", on the following basis:

- (a) That the "D" (Urban Protected Residential - One and Two Family dwellings, Townhouses, etc.) District regulations as contained in Section 10 of Zoning By-law No. 6593, as amended by By-law No. 76-61, applicable to the lands described as Blocks "1" and "2", be modified to include the following variance as a special provision:
  - (i) That notwithstanding Section 10.(1) the following commercial uses shall be permitted:
    - 1. An auto body and fender repair shop within the existing building.
    - 2. A public garage, except that no motor-driven vehicles shall be displayed for sale, bought or sold on the property.
- (b) That the amending By-law be added to Section 19B of Zoning By-law No. 6593 as Schedule S-459a, and that the subject lands on Zoning District Map E-21 be notated S-459a;
- (c) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593 and Zoning District Map E-21 for presentation to City Council;

- (d) That the proposed modification in zoning is in conformity with the Official Plan for the Hamilton Planning Area.

NOTE: The purpose of the By-law is to provide for a modification to the established "D" (Urban Protected Residential - One and Two Family Dwellings, Townhouses, etc.) District regulations for property located at 250 Gibson Avenue North (Block "1"), and a further modification to the "D" District regulations for property at 252 Gibson Avenue North (Block "2").

The effect of the By-law is to permit, in addition to the uses allowed under the "D" District regulations, the following uses:

- (a) The existing auto body and fender repair shop;
- (b) A public garage, except that no motor-driven vehicles shall be displayed for sale, sold or brought on the property.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 March 3 respecting Zoning Application 88-116, for property at the north-east corner of Quaker Crescent and Queen Victoria Drive.

The Committee APPROVED the following:

That APPROVAL be given to Zoning Application 88-116, S. Khan, owner, for a change in zoning from "C" (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District, for property at the north-east corner of Quaker Crescent and Queen Victoria Drive, as shown on the attached map marked as APPENDIX "E", on the following basis:

- (a) That the subject lands be rezoned from "C" (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District;
- (b) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593 and Zoning District Maps E-49B and E-49C for presentation to City Council;
- (c) That the proposed change in zoning is in conformity with the Official Plan for the Hamilton Planning Area.

NOTE: The purpose of the by-law is to provide for a change in zoning from "C" (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District, for property located at the north-east corner of Quaker Crescent and Queen Victoria Drive.

The effect of the by-law is to permit the subdivision of the subject lands into four lots for small lot single-family dwellings.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 March 3 respecting Zoning Application 88-125, for property on the east side of Upper James Street south of Rymal Road East.

The Committee APPROVED the following:

That APPROVAL be given to Zoning Application 88-125, Chrysler Canada Limited, lessee, for a change in zoning for Block "1", from "HH" (Restricted Community Shopping and Commercial) District, modified to "G-1" (Designed Shopping Centre) District, and Block "2" from "G-1" (Designed Shopping Centre) District to "HH" (Restricted Community Shopping and Commercial) District modified, for property located on the east side of Upper James Street south of Rymal Road East, as shown on the attached map marked as APPENDIX "F", on the following basis:

- (a) That the lands described as Block "1" be rezoned from "HH" (Restricted Community Shopping and Commercial) District, modified to "G-1" (Designed Shopping Centre) District;

ZA 88-116 -  
north-east  
corner of  
Quaker Crescent  
and Queen Victoria  
Drive.

ZA 88-125 -  
east side of  
Upper James  
Street, south  
of Rymal Road  
East.

- (b) That the lands described as Block "2" be rezoned from "G-1" (Designed Shopping Centre) District to "HH" (Restricted Community Shopping and Commercial ) District, modified;
- (c) That Schedule "A" to By-law No. 88-93 be amended by adding the lands described as Block "2" thereto, and deleting the lands described as Block "1" therefrom;
- (d) That the amending By-law be added to Section 19B of Zoning By-law No. 6593 as Schedule S-1071a, and that the lands described as Block "2" be notated as S-1071a on Zoning District Map E-9E;
- (e) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593, as amended by By-law No. 88-93, and Zoning District Map E-9E for presentation to City Council;
- (f) That the proposed change in zoning is in conformity with the Official Plan for the Hamilton Planning Area.

NOTE: The purpose of the By-law is to provide for a change in zoning for a strip of land on the east side of Upper James Street in the area south of Rymal Road East, on the following basis:

- (a) Block 1 - Change in zoning from "HH" (Restricted Community Shopping and Commercial) District, modified to "G-1" (Designed Shopping Centre) District.
- (b) Block 2 - Change in zoning from "G-1" (Designed Shopping Centre) District to "HH" (Restricted Community Shopping and Commercial) District, modified.

The effect of the proposed change in zoning is to permit the re-alignment of the property line to allow a more desirable parking arrangement for the existing restaurant (MacDonald's) to the north and the proposed automobile dealership (Chrysler) to the south.

ZA 88-128,  
189 Oak Avenue.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 March 3 respecting Zoning Application 88-128, for property at 189 Oak Avenue.

Report of the circularization was given as follows:

190 notices sent	7 in favour	10 opposed
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Mrs. Obermeyer, 168 Oak Avenue spoke to the Committee and expressed concerns at how this property had been converted to date. The Building Department staff then provided a history on this matter. Mrs. Obermeyer expressed her opposition to this application.

Mr. Deli, 181 Oak Avenue spoke in opposition to this application and cited matters such as parking shortage and lack of maintenance of the property.

The applicant, Mr. Eric Charles addressed the Committee and out-lined the upgrading he has done to the building to date. He added that he wishes to make the building what he pays taxes for, i.e. 4 units.

The Committee then discussed this matter in great length and requested clarification on certain points from the staff with respect to such matters as zoning verifications, assessment, etc.



Following discussion on this matter the Committee then agreed to DENY this application as follows:

That Zoning Application 88-128, Eric Charles, owner, requesting a modification to the established "D" (Urban Protected Residential - One and Two Family, Townhouses, etc.) District regulations to permit 4 dwelling units in the existing building, for the property located at 189 Oak Avenue, as shown on the attached map marked as APPENDIX "G", BE DENIED for the following reasons:

- (a) It represents an intrusion of a multiple-unit dwelling into an area occupied primarily by one and two-family dwellings;
- (b) It represents an over-intensification of use, in that the property does not meet the minimum lot area requirement for a converted dwelling in a "D" (Urban Protected Residential - One and Two-Family Dwellings, etc.) District. The minimum lot area requirement is  $270.0\text{m}^2$  (2,906.26 sq.ft.), whereas the property only has  $167.22\text{m}^2$  (1,800.0 sq.ft.) of lot area. Furthermore, the proposed four dwelling units which range in floor area from approximately  $34.6\text{m}^2$  (372.4 sq.ft.) to a maximum of approximately  $45.9\text{m}^2$  (494.1 sq.ft.) do not provide the minimum  $65.0\text{m}^2$  (699.65 sq.ft.) of floor area for a "Class A Dwelling Unit";
- (c) Adequate parking and manoeuvring space cannot be provided for the five off-street parking spaces required for the converted dwelling; and,
- (d) Approval of the application would establish an undesirable precedent and set the stage for other land owners to convert their dwellings for multiple occupancy.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 February 20 respecting proposed Draft Plan of Subdivision "Wheten Court".

The owner of property at 206 Norrie Avenue questioned the use in this subdivision and staff reported on the proposed schedule for development.

The Committee then APPROVED the following:

- (a) That APPROVAL be given to Official Plan Amendment No. 72 to redesignate the subject lands from "Utilities" to "Residential", and that the City Solicitor be directed to prepare a by-law to amend the Official Plan for submission to the Regional Municipality of Hamilton-Wentworth.
- (b) That APPROVAL be given to Subdivision Application 88-20, City of Hamilton, owner, to establish a draft plan of subdivision on the north side of Mohawk Road East and the east side of Warren Avenue, subject to the following conditions:
  - (i) That this approval apply to the plan prepared by the Regional Department of Engineering, dated 1988 September 30, revised to show 24 lots.
  - (ii) That the street be dedicated as public highway on the final plan.
  - (iii) That the street be named to the satisfaction of the City of Hamilton and the Regional Municipality of Hamilton-Wentworth.
  - (iv) That the final plan conform with the Zoning By-law approved under The Planning Act.
  - (v) That such easements as may be required for utility or drainage purposes be granted to the appropriate authority.

Proposed  
Draft Plan of  
Subdivision :  
"Wheten Court".



- (vi) That the owner provide the City of Hamilton with a certified list showing the net area and width of each lot and block in the final plan.
- (vii) That the owner shall erect a sign in accordance with Section XI of the subsequent Subdivision Agreement prior to the issuance of a final release by the City of Hamilton.
- (viii) That the owner agree in writing to satisfy all requirements, financial and otherwise, of the City of Hamilton.

(c) That the subdivision agreement BE ENTERED into by the Corporation of the City of Hamilton and the owner to provide for compliance with the conditions of approval established by the Hamilton-Wentworth Region with respect to this application (SA-88-20), Corporation of the City of Hamilton, owner, proposed draft plan of subdivision, and that the City execute the agreement when the said conditions have been met and the City's share of the cost of installing municipal services has been approved by City Council.

Site Plan Control  
Application DA-88-48 and  
modification to  
ZA 87-48, for  
property at  
1400 Upper James  
Street.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 March 8 respecting Site Plan Control Application DA-88-48 and a modification to Zoning Application 87-48, for property at 1400 Upper James Street.

Mr. J. Sakala of the Planning Department outlined this report.

Mr. Bob Morris of 1452 Upper James Street spoke in opposition to this matter. He expressed concerns that he understood that the items not resolved at Public meetings would be brought back to another Public meeting for further discussion. He indicated that he feels he was by-passed in this process.

Alderman Ross then outlined the concerns that the neighbouring church has about the proposed walkway beside the graveyard as well as other discussions which had ensued on this matter.

Mrs. Dickens, 1428 Upper James Street spoke to the Committee. She indicated that she is a member of Barton Stone United Church which is the neighbouring church to the development. She added that she would like to see the development follow some of the type of old style characteristic in the church. She added concerns at the hours of operation for the businesses in this development, particularly on Sunday when they would affect worship.

The Committee then APPROVED the following:

- (A) That approval be given to Site Plan Control Application DA-88-48 by Bayfield Green Development Company, owner of lands at 1400 Upper James Street for a commercial development for a White Rose Nursery, Cashway Building Centre, restaurant and retail stores subject to the following:
  - (a) Finalization of the By-law for the proposed development incorporating the approvals of Zoning Application ZA-87-48;
  - (b) Modification to the plans related to notes, grading and dimensions as marked in red on the plan;
  - (c) Submission of a revised site plan to the satisfaction of the Director of Traffic Services to resolve truck manoeuvring details;
  - (d) Dedication to the Region of Hamilton-Wentworth, for a road widening of approximately 3.048m along Upper James Street;
  - (e) Provision on the plan to include a traffic sign schedule to the satisfaction of the Director of Traffic Services;

- (f) Provision of an appropriate agreement to provide for the sewer easement along and within the northerly portion of the subject lands, to the satisfaction of the Commissioner of the Hamilton-Wentworth Engineering Department;
  - (g) Provision of an appropriate agreement to provide for construction and dedication of the pedestrian walkway along and within the northerly portion of the subject land, to the satisfaction of the Commissioner of the Hamilton-Wentworth Engineering Department.
- (B) That Section 9 of the Third Report of the Planning and Development Committee, approved on 1988 February 9, in regard to Zoning Application 87-48, by Bayfield Green development Company, owner of lands at 1400 Upper James Street, BE AMENDED as follows:
- (a) To delete clauses-(B)(f)(ii)(3) and (4), and add the following clauses in their place:
    - (i) (B)(f)(ii)(3)(i) No part of a side or rear yard used for outdoor storage area "A" as shown on Schedule "B", attached herewith and marked as APPENDIX "I", shall be situated less than 9.1 metres from the adjoining westerly lot line, less than 7.6 metres from the adjoining southerly lot line, and less than 3.0m from the adjoining northerly lot line.
    - (ii) (B)(f)(ii)(3)(ii) No part of a side yard used for outdoor nursery area "B" as shown on Schedule "B", attached herewith and marked as APPENDIX "I", shall be situated less than 3.0 metres from the adjoining westerly and southerly lot lines, and less than 4.6 metres from the adjoining easterly lot line.
    - (iii) (B)(f)(ii)(4) The Total area used for outside storage area "A" as shown on Schedule "B", attached herewith and marked as APPENDIX "I", shall not exceed 19% of the lot area.
  - (b) To repeal Schedule "B" and replace it with a new Schedule "B", attached herewith and marked as APPENDIX "H".

NOTE: The changes are required to clarify and designate outside storage area "A" and outside nursery area "B" as part of the By-law, and to revise Schedule "B" to shown the various features of the development.

There being no further business, the meeting then adjourned.

Adjournment.

Taken as read and approved,

ALDERMAN J. SMITH, CHAIRMAN  
PLANNING AND DEVELOPMENT

Susan K. Reeder  
Secretary  
1989 March 15



FOR ACTION

2.

REPORT TO: The Planning and Development Committee

FROM: P. Kuppe, Building Commissioner

DATE: March 22, 1989

COMM. FILE:

DEPT. FILE:

SUBJECT:

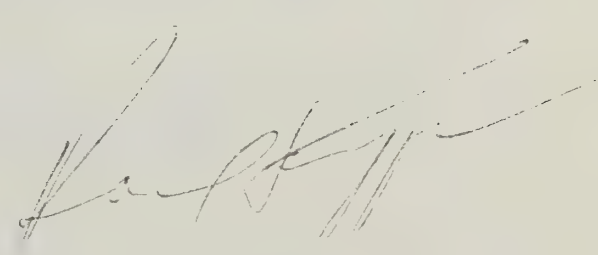
Demolition

RECOMMENDATION:

That the Building Commissioner be authorized to issue demolition permits for the following properties: -

- A. 1164 Garth Street
- B. 1146 Garth Street
- C. 173 Mud Street
- D. 1138 Upper Wentworth Street
- E. 30 Adair Avenue North

FINANCIAL IMPLICATIONS: N/A



BACKGROUND:

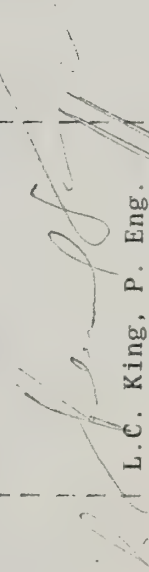
For background information see attached sheets.



## DEMOLITION CONTROL

CATEGORY "A" - PROPOSED USE OF LAND IS PERMITTED BY PRESENT ZONING

ITEM	ADDRESS	PRESENT USE	PROPOSED USE	LOT SIZE	OWNER	ZONE	RECOMMENDATION
A.	1164 Garth St.	S.F.D.	East/West Freeway Corridor	75.00' X 475.12'	Regional Municipality of Hamilton-Wentworth	"AA"	It is recommended that Committee approve demolition.
B.	1146 Garth St.	S.F.D.	East/West Freeway Corridor	75.00' X 192.19'	Regional Municipality of Hamilton-Wentworth	"AA"	It is recommended that Committee approve demolition.
C.	173 Mud Street	S.F.D.	East/West Freeway Corridor	181.50' X 198.00'	Regional Municipality of Hamilton-Wentworth	"AA"	It is recommended that Committee approve demolition.
D.	1138 Upper Wentworth St.	S.F.D.	East/West Freeway Corridor	50.00' X 264.00'	Regional Municipality of Hamilton-Wentworth	"AA"	It is recommended that Committee approve demolition.
E.	30 Adair Ave. N.	S.F.D.	S.F.D.	45.00' X 127.50'	Frank Di Francesco	"C"	It is recommended that Committee approve demolition.

  
 L.C. King, P. Eng.  
 Deputy Building Commissioner

L.C. King, P. Eng.  
Deputy Building Commissioner

3.

FOR ACTION

REPORT TO: Mrs. S. K. Reeder  
Secretary, Planning and Development Committee

FROM: Mr. Lou Sage  
Chief Administrative Officer

DATE: 1989 March 10  
COMM FILE:  
DEPT FILE: 831-0001.3

SUBJECT: Task Force to Review the Mandate and Structure of  
the Hamilton Harbour Commissioners

RECOMMENDATION:

- 1.4 That acknowledgement be given to the work of investigating the environmental concerns with respect to the harbour now being undertaken and examined by the Remedial Action Plan process.
- 1.5 That the Hamilton Harbour Commissioners be a part of any overall Co-ordinating Steering Committee established for the implementation process respecting the Remedial Action Plan.
- 2.3 Due to the difficulty of determining a general interpretation of the term "navigation and shipping", that the City of Hamilton and the Hamilton Harbour Commissioners meet in order to agree on a clarification of the term "navigation and shipping for their own purposes. (See Recommendation 3.1).
- 3.1(a) That a general interpretation of the phrase "navigation and shipping" not be accepted, but that each interpretation of this phrase rest with the circumstances surrounding the particular case or situation at hand; and
- (b) That, notwithstanding Section (a) above, that the City Hamilton and Hamilton Harbour Commissioners meet in order to agree on a clarification of the term "navigation and shipping" as recommended in the Report outlined in Recommendation 2.3.
- 3.2(a) That the definition of the term "waterfront property" set out in the judgement of Mr. Justice Griffiths, as affirmed by the Ontario Court of Appeal, in Hamilton Harbour Commissioners v. The Corporation of The City of Hamilton et al be accepted as the legal definition of the term "waterfront property for the purposes of The Hamilton Harbour Commissioners' Act.

- 3.2(b) That, therefore, the term "waterfront property" be defined to mean:

"that real property abutting or fronting on the body of water that constitutes Hamilton harbour".

- 3.3(a) That the principles set out in the judgement of Mr. Justice Griffiths, as affirmed and augmented by the Ontario Court of Appeal in Hamilton Harbour Commissioners v. The Corporation of The City of Hamilton et al be accepted as the law applicable to the issue of jurisdiction in Hamilton Harbour.

- (b) That, accordingly it be recognized that,

- (i) the City may validly pass a zoning by-law affecting land use within the Harbour so long as the by-law does not explicitly attempt to prohibit or regulate the use of land for purposes related to shipping and navigation or the use of land owned by the Federal Crown;
- (ii) the Commissioners may validly pass by-laws to regulate the use and development of land within the harbour for purposes related to shipping and navigation; and,
- (iii) if a direct conflict arises between validly-enacted City zoning by-law and validly-enacted Commissioners by-law with respect to the use of a parcel of land within the harbour, the operation of the City zoning by-law is suspended during the operation of the Commissioners by-law.

- 3.4(a) That the definition of the term "harbour headline" set out in the judgement of Mr. Justice Griffiths, as affirmed by the Ontario Court of Appeal in Hamilton Harbour Commissioners v. The Corporation of The City of Hamilton et al be accepted as the property legal definition of the term "harbour headline" for the purposes of management and operation of navigation and shipping in Hamilton Harbour.

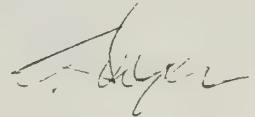
- (b) That, therefore, the term "harbour headline" be defined as "a line established out from the shoreline beyond which breakwaters, wharfs, piers and other structures may not be built".

- 3.4(c) That any by-law passed by the Hamilton Harbour Commissioners to establish or amend the "harbour headline" for Hamilton Harbour comply, like any other of their by-laws, with Subsection 20 (2) of The Hamilton Harbour Commissioners' Act which reads:

"No By-law shall have force or effect until confirmed by the Governor in Council and published in the Canada Gazette, and every such by-law shall, at least ten days before it is submitted to the Governor in Council, be served upon the City Clerk of Hamilton".

- 4.1 That City Council request the Hamilton-Wentworth Regional Police Commission to direct the Marine Unit of the Regional Police Department to be responsible for the testing, posting of warnings, and public announcements respecting the ice conditions in Hamilton Harbour and Cootes Paradise.

FINANCIAL IMPLICATIONS: (IF NONE, STATE N/A)



BACKGROUND:

In accordance with City Council's directions the above recommendations of the Task Force are herewith forwarded to the Planning and Development Committee for their review and consideration.

Attached are copies of the extracts of the recommendations and background information contained in the Task Force Report.

Copies of the full report have been distributed to all members of City Council. Additional copies of this report can be obtained from Mrs. Susan Reeder, Task Force Secretary.

Encl.

cc. Alderman B. Hinkley



## RECOMMENDATION

### 1.4 REMEDIAL ACTION PLAN ANALYSIS

THAT ACKNOWLEDGEMENT BE GIVEN TO THE WORK OF INVESTIGATING THE ENVIRONMENTAL CONCERNS WITH RESPECT TO THE HARBOUR NOW BEING UNDERTAKEN AND EXAMINED BY THE REMEDIAL ACTION PLAN PROCESS.

*BACKGROUND:* Environmental concerns are being thoroughly examined in the Remedial Action Plan process and therefore do not have to be repeated by another process. This RAP process has involved a large number of stakeholders who, indeed, established the goals for the process.

The stakeholders will be responding to the draft final report this Fall. It should be noted that stakeholder concerns have gone beyond water quality to include items such as aesthetics and access.

## RECOMMENDATION

### 1.5 REMEDIAL ACTION PLAN CO-ORDINATING STEERING COMMITTEE

THAT THE HAMILTON HARBOUR COMMISSIONERS BE A PART OF ANY OVERALL CO-ORDINATING STEERING COMMITTEE ESTABLISHED FOR THE IMPLEMENTATION PROCESS RESPECTING THE REMEDIAL ACTION PLAN.

**BACKGROUND:** An item of concern to the stakeholders has been the implementation of any Remedial Action Plan. The stakeholders are considering a proposal to establish an overall Co-ordinating Steering Committee to oversee implementation. Such a Steering Committee would bring together various interests in the harbour and ensure that the questions of who is responsible and who pays are answered and that the Remedial Action Plan is monitored.

## RECOMMENDATION

### 2.3

#### "NAVIGATION AND SHIPPING" DEFINITION

DUE TO THE DIFFICULTY OF DETERMINING A GENERAL INTERPRETATION OF THE TERM "NAVIGATION AND SHIPPING", THAT THE CITY OF HAMILTON AND THE HAMILTON HARBOUR COMMISSIONERS MEET IN ORDER TO AGREE ON A CLARIFICATION OF THE TERM "NAVIGATION AND SHIPPING" FOR THEIR OWN PURPOSES. (SEE RECOMMENDATION 3.1)

**BACKGROUND:** The City and the Commissioners appear to have compatible visions for the harbour at the Official Plan and Master Plan levels. It is in the more specific area of zoning that difficulties lie. Recent case law has reaffirmed that dual jurisdictions operate in the harbour and that each jurisdiction is determined by use: the Commissioners' by Navigation and Shipping, and the City's by all other uses. This is relevant to the West Harbour, where it would be desirable to invite the Commissioners to deem Piers 1, 2, and 3 surplus to the needs of Navigation and Shipping. It is also relevant to the use, still to be determined, of the Windemere Basin, presently designated according to the City as a special policy area.

## RECOMMENDATION

### 3.1 DEFINITION "NAVIGATION AND SHIPPING"

- (a) THAT A GENERAL INTERPRETATION OF THE TERM "NAVIGATION AND SHIPPING" NOT BE ACCEPTED, BUT THAT EACH INTERPRETATION OF THIS TERM REST WITH THE CIRCUMSTANCES SURROUNDING THE PARTICULAR CASE OR SITUATION AT HAND; AND
- (b) THAT, NOTWITHSTANDING SECTION (a) ABOVE THAT, THE CITY OF HAMILTON AND THE HAMILTON HARBOUR COMMISSIONERS MEET IN ORDER TO AGREE ON A CLARIFICATION OF THE TERM "NAVIGATION AND SHIPPING," AS RECOMMENDED IN THE REPORT OF THIS TASK FORCE'S PLANNING SUBCOMMITTEE, AND OUTLINED IN RECOMMENDATION 2.3.

**BACKGROUND:** Constitutionally the Parliament of Canada has the exclusive legislative authority in relation to all matters coming within the subject-matter of navigation and shipping.<sup>1</sup> Implicit in this authority is the legislative jurisdiction over the subject-matter of harbours.<sup>2</sup> Accordingly, Parliament had the legislative authority to establish the Hamilton Harbour Commissioners.<sup>3</sup> By statute, Parliament has conferred on the Hamilton Harbour Commissioners absolute<sup>4</sup> jurisdiction over land uses on lands owned by the Commissioners within the limits of Hamilton harbour, to be developed for shipping and navigation or harbour purposes.<sup>5</sup> Also, by statute, Parliament, with respect to privately owned lands within the harbour, has conferred jurisdiction on the Hamilton Harbour Commissioners to enact by-laws controlling the use of such private lands to the extent such land uses might interfere with the navigation and shipping activities of the harbour, but the Commissioners are not permitted to exercise their jurisdiction in such a way as to affect the proprietary rights of private land owners.<sup>6</sup>

#### **RATIONALE:**

##### **A. Definitions**

In view of the significance of navigation and shipping in determining the Hamilton Harbour Commissioners' jurisdiction to develop their own lands and to enact by-laws controlling the use of private lands, a definition of navigation and shipping might be useful.



Although "navigation" has not been defined in any federal legislation,<sup>7</sup> it has been described in one case as "a well known term connoting the travel of ships on water from one point to another"<sup>8</sup> and has been noted in the same case as having been defined in several leading dictionaries as follows:<sup>9</sup>

The Shorter Oxford English Dictionary

Navigation 1. The action of navigating; The action or practice of passing on water in ships or other vessels .... 2. The art or science of directing the movements of vessels on the sea ....

The Living Webster Encyclopedia Dictionary of the English Language

Navigate. To travel on water or boats ....  
Navigation. The art of navigating; the science or art of managing ships; the science of determining the location, speed, destination, and direction of airplanes and other craft.

Black's Law Dictionary, 4th ed.<sup>10</sup>

Navigation. The art or science or the business of traversing the sea or other waters in ships or vessels.

Stroud's Judicial Dictionary, 4th ed.

Navigation. (1) "Navigation" is "the science or art of conducting a ship from one place to another ...."

The case in which those definitions are found is not binding authority in Ontario. Elsewhere, "navigation" has been defined as "methods of determining a ship's position and course by geometry and nautical astronomy...."<sup>11</sup>

Likewise, "shipping" has not been defined in any federal legislation.<sup>12</sup> Nor has it been defined in any Canadian case. Elsewhere, "shipping" has been defined as follows:<sup>13</sup>

Ships in general; ships or vessels of any kind intended for navigation. Relating to ships; as, shipping interests, shipping affairs, shipping business, shipping concerns Putting on board a ship or vessel, or receiving on board a vessel,

while the "law of shipping" has been described as follows:<sup>14</sup>

A comprehensive term for all that part of the maritime law which relates to ships and the persons employed in or about them. It embraces such subjects as the building and equipment of vessels, their registration and nationality, their ownership and inspection, their employment (including charter-parties, freight, demurrage, towage and salvage), and their sale, transfer and mortgage; also, the employment, rights, powers, duties of masters and mariners; and the law relating to ship-brokers, ship-agents, pilots, etc.

Clearly, navigation and shipping have not been defined with a great degree of specificity. Also, there does not appear to be any widely accepted judicial or legislative definitions of those terms in Canada. In addition, from a legal point of view, definitions, by themselves, are rarely sufficient to make a determination with respect to jurisdiction. For instance, the definitions that have been presented here afford little insight into the constitutional question whether the Hamilton Harbour Commissioners are acting within their jurisdiction when they develop their own lands or enact by-laws controlling the use of private lands. Such definitions provide, at most, a reference point but are in no way determinative of such jurisdictional questions. Therefore, they cannot be treated in isolation.

## B. Rule of Interpretation

Much more important than any definition in understanding the power over navigation and shipping is the rule that the Courts have applied in interpreting the scope of this power. In this regard it is important to note that the power to control navigation and shipping, at least as it has been conferred on Parliament, is to be widely construed.<sup>15</sup> As a result, Parliament's power over navigation and shipping has been interpreted as conferring upon Parliament legislative competence over navigable waters, works of navigation, harbours (which was mentioned earlier), and a far-reaching body of maritime or admiralty law, which includes law regarding liability for loss or delay of a ship's cargo, liability for loss of life or personal injury caused by a ship, marine insurance, the sale, purchase and ownership of ships, the construction, repair and maintenance of ships, and pilotage and towage.<sup>16</sup>

In summation, the power over navigation and shipping has been given a liberal interpretation by the Courts.

## C. Tests

Equally important as the relevant rule of interpretation are the tests that the Courts have applied, admittedly in other contexts, such as labour relations, to determine whether a particular undertaking falls within federal jurisdiction over navigation and shipping or within provincial jurisdiction over some other subject matter. One test is called the test of dominant features and objects.<sup>17</sup> According to this test, the dominant features and objects of an undertaking must be examined in order to determine whether the undertaking falls within federal jurisdiction over navigation and shipping.<sup>18</sup> Where an undertaking has some navigation and some shipping but these features are strictly incidental and subordinate to a totally different activity, the undertaking does not fall within federal jurisdiction over navigation and shipping.<sup>19</sup> Another test that has been applied bases its determination of jurisdiction on whether the undertaking can be regarded as an essential part of navigation or shipping.<sup>20</sup> It is really a variation on the same theme. So too is a third test that examines whether the undertaking is intimately connected with navigation and shipping.<sup>21</sup>



In any event, to illustrate the application of these tests, a company whose main object was the establishment of offshore oil and gas drilling sites and which incidentally to its operations used ships and boats for transporting workers and materials to the sites and for servicing the crews operating the drilling rigs and welding the necessary piping was held not to be engaged in navigation and shipping in the constitutional sense.<sup>22</sup>

#### D. Conclusion

The term "navigation and shipping" can be defined in a general sense, but not likely with the precision required to develop firm guidelines to assist in the determination of whether a particular undertaking falls within federal jurisdiction over that subject matter. Furthermore, even if this term could be defined with precision, there is always the risk that the resulting definition could fail to anticipate future developments in the field of navigation and shipping that might alter the ordinary meaning of the term to the benefit of one party or to the detriment of another. Nevertheless, in the determination of question of jurisdiction, at least as it pertains to the Hamilton Harbour Commissioners, the Commissioners, who are, to a certain extent, delegates of Parliament's power over navigation and shipping within the limits of Hamilton harbour, are probably subject to the same standards as Parliament in the interpretation of their power over navigation and shipping. Therefore, any exercise of this power by the Commissioners is probably subject to the rule of broad interpretation and to the test of dominant features and objects. These principles can only be applied on a case-by-case basis.

The preceding discussion should not be understood to preclude cooperation between the City of Hamilton and the Hamilton Harbour Commissioners on the meaning of the term "navigation and shipping." As was pointed out in a report presented by Ian Binnie, the City's legal counsel for the proceedings pertaining to the draft Official Plan amendment respecting the harbour, to the Planning and Development Committee of the City Council at a special meeting of the Committee held on June 8th, 1988, "[t]he City and the Commissioners may agree upon where they think the jurisdictional line should be drawn," but, as he cautioned the Committee, "any private land owner could ignore the agreement and apply to the court for a declaration that the by-laws of the Commissioners or the City (as the case may be) are ultra vires or inoperative." (Emphasis is his.)



3.2 DEFINITION "WATERFRONT PROPERTY"

- (a) THAT THE DEFINITION OF THE TERM "WATERFRONT PROPERTY" SET OUT IN THE JUDGMENT OF MR. JUSTICE GRIFFITHS, AS AFFIRMED BY THE ONTARIO COURT OF APPEAL, IN HAMILTON HARBOUR COMMISSIONERS V. THE CORPORATION OF THE CITY OF HAMILTON ET AL BE ACCEPTED AS THE LEGAL DEFINITION OF THE TERM "WATERFRONT PROPERTY" FOR THE PURPOSES OF THE HAMILTON HARBOUR COMMISSIONERS' ACT.
- (b) THAT, THEREFORE, THE TERM "WATERFRONT PROPERTY" BE DEFINED TO MEAN "THAT REAL PROPERTY ABUTTING OR FRONTING ON THE BODY OF WATER THAT CONSTITUTES HAMILTON HARBOUR."

BACKGROUND: The Hamilton Harbour Commissioners' Act has defined the limits of Hamilton harbour to include "all the waters of Burlington Bay and what is known as Cootes Paradise, together with inlets thereof (excepting, however, Burlington Channel), and also waterfront property, water lots, piers, docks, shores and beaches in and along the said bay and waters." Under this Act, the Hamilton Harbour Commissioners, except in so far as private property or rights are concerned, have jurisdiction within the limits of Hamilton harbour. However, in defining the harbour limits over which the Hamilton Harbour Commissioners have jurisdiction, the Act does not define "waterfront property", among other terms. Our Subcommittee has been asked to provide a legal definition of this term.

RATIONALE: Mr. Justice Griffiths (as he then was) of the Ontario High Court of Justice in HAMILTON HARBOUR COMMISSIONERS V. CORPORATION OF CITY OF HAMILTON ET AL also observed that The Hamilton Harbour Commissioners' Act does not define "waterfront property." Although it may not have been necessary for the purposes of that case to do so, His Lordship interpreted "waterfront property" to mean "that real property abutting or fronting on the body of water that constitutes Hamilton harbour." On appeal his interpretation was not questioned, in any respect, by the Ontario Court of Appeal. Therefore, until overruled by the Ontario Court of Appeal or the Supreme Court of Canada in a subsequent case, Mr. Justice Griffiths' interpretation

of the meaning of "waterfront property" is the legal definition of that term that applies under The Hamilton Harbour Commissioners' Act. What actually constitutes "waterfront property" in or along Hamilton harbour is a question of fact that must be resolved by the Court or by agreement of any parties interested in the matter.

## RECOMMENDATION

### 3.3 JURISDICTION IN HAMILTON HARBOUR

- (a) THAT THE PRINCIPLES SET OUT IN THE JUDGMENT OF MR. JUSTICE GRIFFITHS, AS AFFIRMED AND AUGMENTED BY THE ONTARIO COURT OF APPEAL, IN HAMILTON HARBOUR COMMISSIONERS V. THE CORPORATION OF THE CITY OF HAMILTON ET AL BE ACCEPTED AS THE LAW APPLICABLE TO THE ISSUE OF JURISDICTION IN HAMILTON HARBOUR.
- (b) THAT, ACCORDINGLY, IT BE RECOGNIZED THAT,
- (i) THE CITY MAY VALIDLY PASS A ZONING BY-LAW AFFECTING LAND USE WITHIN THE HARBOUR SO LONG AS THE BY-LAW DOES NOT EXPLICITLY ATTEMPT TO PROHIBIT OR REGULATE THE USE OF LAND FOR PURPOSES RELATED TO NAVIGATION AND SHIPPING OR THE USE OF LAND OWNED BY THE FEDERAL CROWN;
- (ii) THE COMMISSIONERS MAY VALIDLY PASS BY-LAWS TO REGULATE THE USE AND DEVELOPMENT OF LAND WITHIN THE HARBOUR FOR PURPOSES RELATED TO NAVIGATION AND SHIPPING; AND
- (iii) IF A DIRECT CONFLICT ARISES BETWEEN A VALIDLY-ENACTED CITY ZONING BY-LAW AND A VALIDLY-ENACTED COMMISSIONERS BY-LAW WITH RESPECT TO THE USE OF A PARCEL OF LAND WITHIN THE HARBOUR, THE OPERATION OF THE CITY ZONING BY-LAW IS SUSPENDED DURING THE OPERATION OF THE COMMISSIONERS BY-LAW.

**BACKGROUND:** The question has arisen whether the Hamilton Harbour Commissioners exercise exclusive jurisdiction to regulate the use and development of lands within Hamilton harbour or whether they share this authority with the City of Hamilton.

**RATIONALE:** The issue of jurisdiction in Hamilton harbour appears to have been settled by the Judgment of Mr. Justice Griffiths (as he then was) of the Ontario High Court of Justice in HAMILTON HARBOUR COMMISSIONERS v. CORPORATION OF CITY OF HAMILTON. His Judgment was subsequently affirmed, for the most part, by the Ontario Court of Appeal. The relevant legal principles as extracted from Mr. Justice Griffiths' Judgment are as follows:

1. Land use control within Hamilton harbour has both provincial and federal aspects. The City of Hamilton pursuant to the Ontario Planning Act may validly pass a zoning by-law affecting land use within the harbour so long as it does not explicitly attempt to prohibit or regulate the use of land for purposes related to navigation and shipping. Similarly, the Hamilton Harbour Commissioners, pursuant to The Hamilton Harbour Commissioners' Act, may validly pass by-laws to regulate and control the use and development of land within the harbour for purposes related to navigation and shipping. Only if conflict arises with respect to the use of a parcel of land within the limits of the harbour, will the paramountcy of the federal power cause the operation of the by-law of the City to be suspended.

Conflict is to be understood in the sense that compliance with one law involves breaching the other. Consequently, the Hamilton Harbour Commissioners do not have exclusive jurisdiction to regulate the use and development of any lands and property within the limits of Hamilton harbour.

2. Mere ownership by the Hamilton Harbour Commissioners of land within the harbour limits does not by itself render such lands immune to municipal and provincial laws of general application. Lands owned by the Commissioners and not presently used for harbour purposes are legitimate objects of the land use controls of the City and the zoning by-laws only become suspended when they operate to prevent or interfere with the right of the Commissioners to develop such lands for shipping and navigation. If the Commissioners saw fit to sell such lands to be developed for non-harbour purposes, or if the Commissioners undertook to develop the lands for purposes unconnected with shipping or navigation, it is entirely reasonable that the by-laws of the City should have application to control the use to which such lands would be put.



To this the Ontario Court of Appeal added the following:

3. The Province of Ontario and the City of Hamilton have clearly no jurisdiction in respect of the land surrounding Hamilton harbour that is owned by the Federal Crown.

These legal principles appear to resolve the issue of jurisdiction in Hamilton harbour. Nothing short of a constitutional amendment or an agreement to the contrary that binds all interested parties will change this situation.

## RECOMMENDATION

### 3.4 DEFINITION OF "HARBOUR HEADLINE"

- (a) THAT THE DEFINITION OF THE TERM "HARBOUR HEADLINE" SET OUT IN THE JUDGMENT OF MR. JUSTICE GRIFFITHS, AS AFFIRMED BY THE ONTARIO COURT OF APPEAL, IN HAMILTON HARBOUR COMMISSIONERS V. THE CORPORATION OF THE CITY OF HAMILTON ET AL BE ACCEPTED AS THE PROPER LEGAL DEFINITION OF THE TERM "HARBOUR HEADLINE" FOR THE PURPOSES OF THE MANAGEMENT AND OPERATION OF NAVIGATION AND SHIPPING IN HAMILTON HARBOUR.
- (b) THAT, THEREFORE, THE TERM "HARBOUR HEADLINE" BE DEFINED AS "A LINE ESTABLISHED OUT FROM THE SHORELINE BEYOND WHICH BREAKWATERS, WHARFS, PIERS AND OTHER STRUCTURES MAY NOT BE BUILT."
- (c) THAT ANY BY-LAW PASSED BY THE HAMILTON HARBOUR COMMISSIONERS TO ESTABLISH OR AMEND THE "HARBOUR HEADLINE" FOR HAMILTON HARBOUR COMPLY WITH SUBSECTION 20(2) OF THE HAMILTON HARBOUR COMMISSIONERS' ACT, WHICH STATES THE FOLLOWING:

NO BY-LAW SHALL HAVE FORCE OR EFFECT UNTIL CONFIRMED BY THE GOVERNOR IN COUNCIL AND PUBLISHED IN THE CANADA GAZETTE, AND EVERY SUCH BY-LAW SHALL, AT LEAST TEN DAYS BEFORE IT IS SUBMITTED TO THE GOVERNOR IN COUNCIL, BE SERVED UPON THE CITY CLERK OF HAMILTON

### BACKGROUND

"Harbour headline" is a critical term in understanding the management and operation of navigation and shipping in a harbour like Hamilton harbour. It is a term, however, that is neither defined nor even specifically referred to in The Hamilton Harbour Commissioners' Act.

By Dominion Order-in-Council P.C. 1016 dated April 15th, 1914, the Government of Canada established the harbour headline for Hamilton harbour. This harbour headline continued in effect until extended in 1958 by Hamilton Harbour Commissioners By-law 81 confirmed by Dominion Order-in-Council P.C. 1958-1552. Apparently it was further amended by 1972 by a Hamilton Harbour Commissioners By-law to implement a land exchange between the Hamilton Harbour Commissioners and Stelco and Dofasco. Unlike in the

previous instance, there is no record in The Canada Gazette, Part II of the confirmation of this by-law by a Dominion Order-in-Council. In fact, since 1958, there is no record at all of any Dominion Order-in-Council confirming a Hamilton Harbour Commissioners' by-law passed for the purpose of establishing or amending the Hamilton harbour headline. (Copies of the Index to The Canada Gazette, Part II for the years 1976 and 1977 were not available at the time that this Report was written.)

Our Subcommittee has been asked to provide a legal definition of "harbour headline" and to determine how the Hamilton Harbour Commissioners at the present time establish or amend the Hamilton harbour headline.

#### RATIONALE

##### a. Definition of Harbour Headline

In Hamilton Harbour Commissioners v. The Corporation of the City of Hamilton et al Mr. Justice Griffiths (as he then was) of the Ontario High Court of Justice observed that the Hamilton Harbour Commissioners exercise control of the use of land under water in proximity to the shoreline of Hamilton harbour by establishing what is known as a "harbour headline." Although it may not have been necessary to do so, His Lordship then defined "harbour headline" as "a line established out from the shoreline beyond which breakwaters, wharfs, piers and other structures may not be built." According to him, "the location of the headline is determined by a number of factors, including the depth of the water and the economic feasibility of building." On appeal His Lordship's definition of "harbour headline" was not questioned, in any respect, by the Ontario Court of Appeal. Therefore, until overruled by the Ontario Court of Appeal or the Supreme Court of Canada in a subsequent case, Mr. Justice Griffiths' definition of "harbour headline" must be considered the proper legal definition of that term for the purpose of the management and operation of navigation and shipping in Hamilton harbour.

##### b. How the Hamilton Harbour Headline is Now Established or Amended

Also in his Judgment Mr. Justice Griffiths made the following findings of fact:

Until 1970 the Dominion government established or amended harbour headlines in Hamilton harbour by issuing ... Orders-in-Council .... Since 1970 the sole authority has been vested in the Commissioners to establish or amend the Hamilton harbour headlines.

Neither finding was questioned by the Ontario Court of Appeal.



When the Hamilton harbour headline was first established in 1914, it was clearly done by Dominion Order-in-Council. However, when the headline was extended in 1958, it was done by Hamilton Harbour Commissioner By-law confirmed by Dominion Order-in-Council, not by Dominion Order-in-Council alone. When the headline was further amended in 1972, it apparently was done by Dominion Order-in-Council.

When a member of our Subcommittee asked an official of the Hamilton Harbour Commissioners about how the Hamilton harbour headline is now established or amended, he was told that it is done by by-law and that, as is the case with other by-laws, this by-law is served upon the City Clerk before it is submitted to the federal cabinet for confirmation and for publication in The Canada Gazette. (Incidentally, he was also told that generally it takes from 12 to 16 months for a Hamilton Harbour Commissioner By-law to be confirmed by the federal cabinet, though in one instance it took only 3 months.)

The by-law making authority of the Hamilton Harbour Commissioners is found in sections 15 and 20 of The Hamilton Harbour Commissioners' Act. Section 15 provides that the Hamilton Harbour Commissioners "may regulate and control the use and development of all land and property on the water front within the limits of the Harbour of Hamilton, and all docks, wharfs, buildings and equipment erected or used in connection therewith, and for these purposes may pass by-laws as hereinafter provided." What is "hereinafter provided" is section 20, which lists the purposes for which the Hamilton Harbour Commissioners may pass by-laws. Of critical importance in the present importance in the present exercise is subsection 20(2). It reads: "No by-law shall have force or effect until confirmed by the Governor in Council and published in The Canada Gazette, and every such by-law shall, at least ten days before it is submitted to the Governor in Council, be served upon the City Clerk of Hamilton."

The Hamilton Harbour Commissioners purport to exercise their power to establish or amend the headline for Hamilton harbour by by-law. Section 20 of The Hamilton Harbour Commissioners' Act lists the purposes for which the Hamilton Harbour Commissioners may pass by-laws. In order for a by-law of the Hamilton Harbour Commissioners to be valid, it must be passed under the authority of one of the purposes listed in section 20. There is no reason to doubt that the Harbour



Commissioners' power to establish or amend the harbour headline falls within one of those purposes. Paragraphs 20(a) and (b) are the likely purposes supporting the exercise of this power. If the above is true, then subsection 20(2) of the Act applies to by-laws passed by the Harbour Commissioners to establish or amend the harbour headline. If such is not the case, then it should be.

## RECOMMENDATION

### 4.1 ICE SAFETY

THAT CITY COUNCIL REQUEST THE HAMILTON-WENTWORTH REGIONAL POLICE COMMISSION TO DIRECT THE MARINE UNIT OF THE REGIONAL POLICE DEPARTMENT TO BE RESPONSIBLE FOR THE TESTING, POSTING OF WARNINGS, AND PUBLIC ANNOUNCEMENTS RESPECTING THE ICE CONDITIONS IN HAMILTON HARBOUR AND COOTES PARADISE.

BACKGROUND: During the Task Force's deliberations, it was informed that the determination of safe ice conditions in Hamilton Harbour and Cootes Paradise is the users responsibility.

RATIONALE FOR RECOMMENDATION: The Task Force believes that public safety is severely threatèned unless ice conditions are routinely checked, monitored, posted and public announcements made. It is the opinion of the Task Force that the best equipped organization to carry out this function is the Marine Unit of the Hamilton-Wentworth Regional Police Department.



FOR ACTION

44.

REPORT TO: SUSAN K. REEDER, SECRETARY OF THE  
PLANNING AND DEVELOPMENT COMMITTEE

FROM: J. D. THOMS  
COMMISSIONER  
PLANNING AND DEVELOPMENT

DATE: 1989 MARCH 15  
COMM FILE:  
DEPT FILES: SA-88-26  
25T-88039

SUBJECT

Draft Plan of Subdivision "Wentwal Estates"

RECOMMENDATION

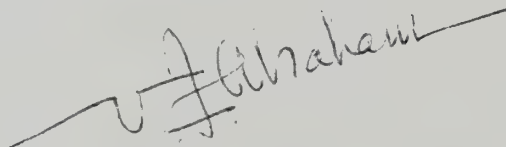
- a) That approval be given to Application SA-88-26, L. Serafini, owner, to establish a draft plan of subdivision, west of Upper Wentworth Street, north of Rymal Road, subject to the following conditions:
1. That this approval apply to the plan prepared by MacKay, MacKay and Peters Ltd., dated June 16, 1988, showing 35 lots for street townhouses, one block for group townhouses and one block for commercial uses.
  2. That the street be dedicated as public highway on the final plan.
  3. That the street be named to the satisfaction of the City of Hamilton and the Regional Municipality of Hamilton-Wentworth.
  4. That the final plan conform with the zoning by-law approved under The Planning Act.
  5. That such easements as may be required for utility or drainage purposes be granted to the appropriate authority.
  6. That the owner provide the City of Hamilton with a certified list showing the net area and width of each lot and block in the final plan.
  7. That the owner shall erect a sign in accordance with Section XI of the subsequent Subdivision Agreement prior to the issuance of a final release by the City of Hamilton.
  8. That the owner agree in writing to satisfy all the requirements, financial and otherwise, of the City of Hamilton.



- b) That the subdivision agreement be entered into by the Corporation of the City of Hamilton and the owner to provide for compliance with the conditions of approval established by the Hamilton-Wentworth Region with respect to this application (SA-88-26), L. Serafini, owner, proposed draft plan of subdivision, and that the City execute the agreement when the said conditions have been met and the City's share of the cost of installing municipal services has been approved by City Council.
- c) That the neighbourhood plan be amended accordingly.



J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development



V. J. Abraham, M.C.I.P.  
Director - Local Planning

#### FINANCIAL IMPLICATIONS

N/A

#### BACKGROUND

##### Owner

L. Serafini, c/o Lousan Developments, Hamilton, Ontario

##### Agent

MacKay, MacKay and Peters, Hamilton, Ontario

##### Surveyor

MacKay, MacKay and Peters, Hamilton, Ontario

##### Location

The lands, comprising 4.62ha, are located on the west side of Upper Wentworth Street and north of Rymal Road within the Barnstown Neighbourhood, City of Hamilton.

##### Proposal

The owner proposes to subdivide the lands into 35 lots for street townhouses, one block for 112 group townhouses and one block for commercial purposes.

### EXISTING DEVELOPMENT CONTROL

Hamilton-Wentworth Official Plan - the lands are identified as "Residential and Related Uses" within the "Urban Policy Areas". The proposal complies.

City of Hamilton Official Plan - the lands are designated "Residential" and "Commercial" respectively. The proposal complies.

Neighbourhood Plan - the lands are designated for attached housing, medium density apartments and commercial. The proposal complies.

Zoning - the existing zoning would permit the intended development.

### COMMENTS FROM CIRCULATION

The following agencies have advised that they have no comment or objection toward the proposal:

Ministry of Municipal Affairs;  
Ministry of Transportation;  
Ministry of the Environment (subject to standard conditions);  
Ministry of Natural Resources;  
Ministry of Culture & Communications;  
Hamilton Region Conservation Authority;  
Ontario Hydro, Union Gas, Bell Telephone;  
City Traffic Department;  
City Building Department.

The Hamilton-Wentworth Department of Engineering has submitted the following comments and recommendations:

- "1) A 12.19m x 12.19m daylight triangle is required at the north-west corner of Upper Wentworth Street and Rymal Road.
- 2) It is recommended that all Blocks on the plan coincide with the severance boundaries to ensure this development proceeds in an orderly manner. Block "6" has been the subject of a severance.
- 3) The owner enter into a City and Regional Subdivision Agreement.

### For your information

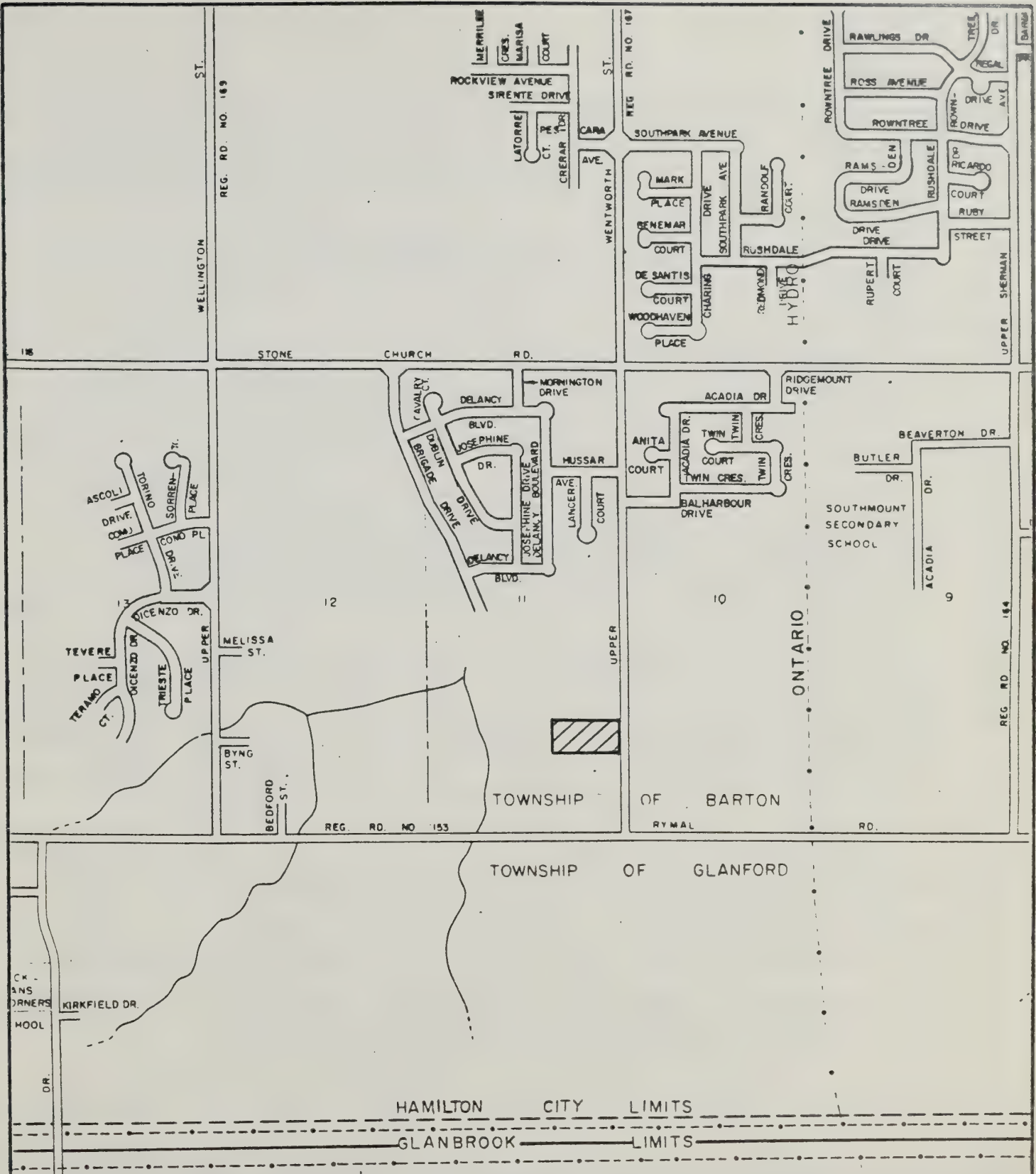
- 1) The road widenings on Rymal Road and Upper Wentworth Street have previously been transferred to the Region and registered on January 18, 1989 as instrument #491440 C.D.
- 2) The applicant should be advised that he will likely be responsible for all roadway improvements which may be required on Rymal Road and Upper Wentworth Street as a result of the commercial development. These matters will be finalized at the site plan stage.

- 3) The proposed subdivision can be serviced to the municipal storm and sanitary sewers on Upper Wentworth Street planned for installation in early 1989.
- 4) The development can be serviced for water from the watermain being constructed to the north in Oakdale Estates Phase 1 or the watermain on Upper Wentworth Street being installed as a local improvement in 1988/89.
- 5) It is expected the Region will cost share for watermain oversizing in the amount of approximately \$45,000.00.
- 6) The plan as submitted is satisfactory, subject to the above comments."

#### COMMENTS

1. The conformity of the proposal with the Official Plans and the Zoning By-law is noted.
2. The Traffic Department advised that access to Lots 1 and 17 should be provided from the proposed road. This issue can be addressed when entrances for driveways are permitted.
3. The requirement of the Ministry of the Environment can be implemented through the condition of draft approval to be established by the Regional Municipality.

JLS/jd



Location Plan For  
**WENTWAL ESTATES**

Regional Municipality of Hamilton-Wentworth  
Planning and Development Department

Legend



PROPOSED SUBDIVISION

North



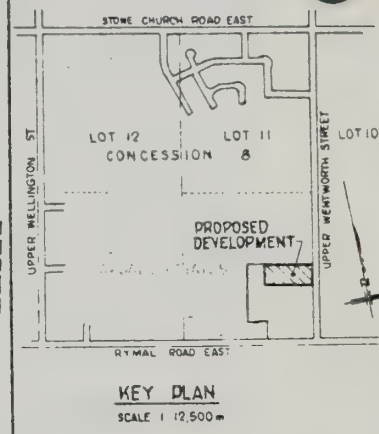
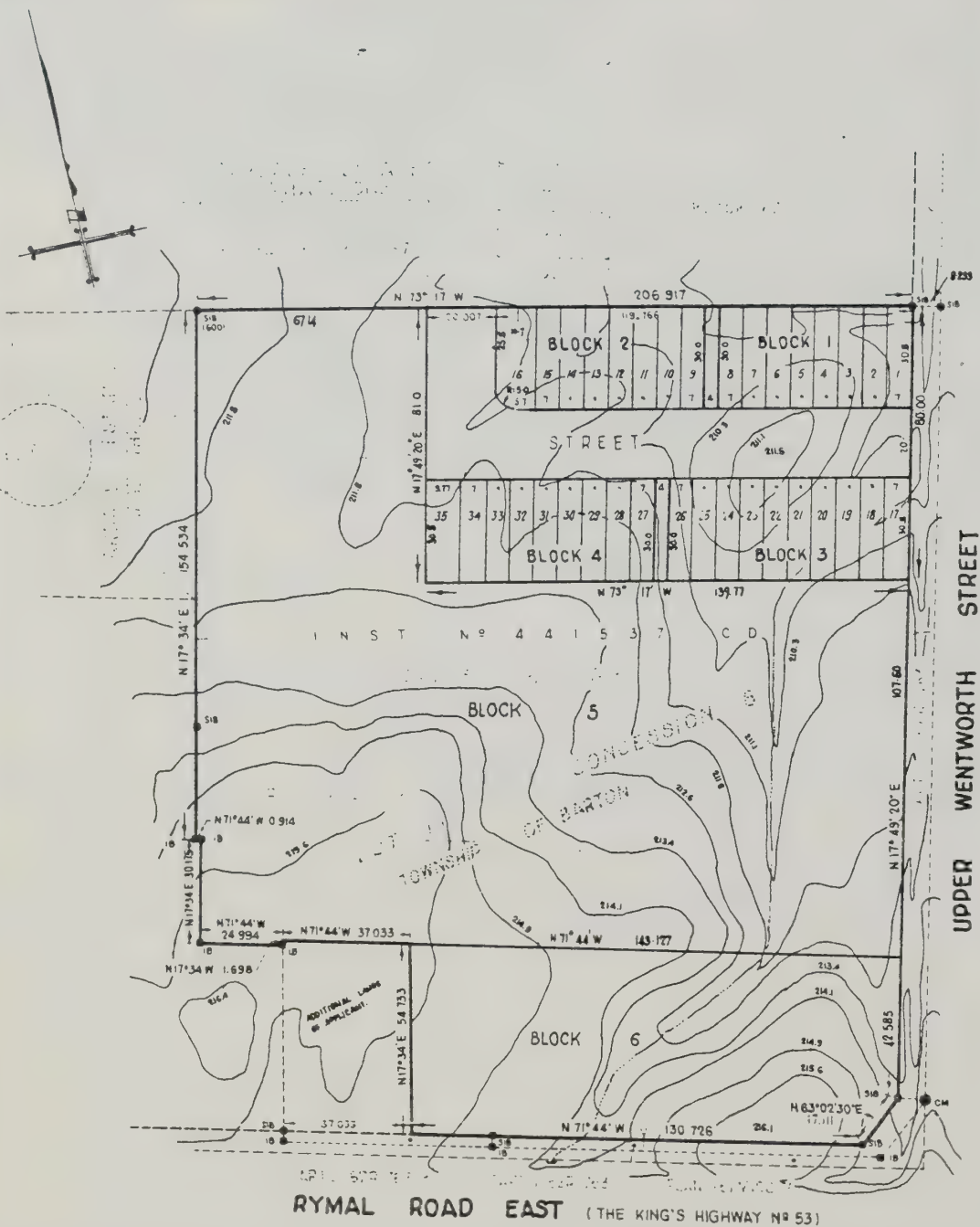
Scale  
N. T. S.

Date  
DEC. 16, 1988

Reference File No.  
25T-88039

Drawing No.





# DRAFT PLAN OF SUBDIVISION OF

BEING  
PART OF LOT 11  
CONCESSION 8  
FORMERLY IN THE  
TOWNSHIP OF BARTON  
NOW IN THE  
CITY OF HAMILTON  
REGIONAL MUNICIPALITY OF  
HAMILTON - WENTWORTH

SCALE 1:1000  
0 5 10 20 30 METERS

## REQUIREMENTS OF THE PLANNING ACT, 1983 CHAPTER 1, SECTION 50-(2)

- |   |                            |
|---|----------------------------|
| A | SEE PLAN                   |
| B | SEE PLAN                   |
| C | SEE PLAN                   |
| D | SEE SCHEDULE               |
| E | RESIDENTIAL & AGRICULTURAL |
| F | SEE PLAN                   |
| G | SEE PLAN                   |
| H | WATER AVAILABLE            |
| I | CLAY                       |
| J | SEE PLAN                   |
| K | SERVICES AVAILABLE         |
| L | SEE PLAN                   |

METRIC:  
DISTANCES SHOWN ON THIS PLAN ARE IN  
METERS AND CAN BE CONVERTED TO FEET  
BY DIVIDING BY 0.3048

BEARINGS ARE ASTRONOMIC AND ARE  
REFERRED TO THE WESTERN LIMIT OF  
UPPER WENTWORTH STREET ON A  
COURSE OF N17°49'20"E ACCORDING  
TO PLAN 62R-7631

SCHEDULE:  
BLOCKS 1, 2, 3 & 4 - STREET TOWNHOUSE - 35 UNITS  
(Lot 8 (1 to 30))  
BLOCK 5 - 112 TOWNHOUSE UNITS  
BLOCK 6 - COMMERCIAL

AREAS  
BLOCKS 1 & 2 - 3533 m<sup>2</sup>  
BLOCKS 3 & 4 - 4193 m<sup>2</sup>  
BLOCK 5 - 2780 m<sup>2</sup>  
BLOCK 6 - 7753 m<sup>2</sup>  
STREET - 3304 m<sup>2</sup>

## OWNER'S CERTIFICATE

I HEREBY AUTHORIZE MACKAY, MACKAY & PETERS LTD.  
TO SUBMIT THIS PROPOSED PLAN OF SUBDIVISION TO  
THE COUNCIL OF THE REGIONAL MUNICIPALITY OF  
HAMILTON - WENTWORTH FOR APPROVAL.

DATED AT HAMILTON, ONTARIO  
THIS 16<sup>TH</sup> DAY OF JUNE 1988

*Louise Scarpini*

L. SCARFINI  
7 FENWICK REAL ESTATE  
699 KING ST E  
HAMILTON

## SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE BOUNDARIES OF THE  
LANDS TO BE SUBDIVIDED AND THEIR RELATIONSHIP  
TO ADJACENT LANDS ARE ACCURATELY AND  
CORRECTLY SHOWN.

DATED AT HAMILTON, ONTARIO  
THIS 16<sup>TH</sup> DAY OF JUNE 1988

*J. David Peters*

J. DAVID PETERS  
ONTARIO LAND SURVEYOR

MACKAY, MACKAY & PETERS  
LIMITED

SUITE 202, UNION GAS BUILDING  
35 MURDOCH STREET SCARBOROUGH  
HAMILTON, ONTARIO L8N 3K1

S-6963-1

5.

DATE: 1989 March 22  
COMM FILE:  
DEPT. FILE: DA-88-60  
Ainslie Wood  
Neighbourhood

- i) modification to the plan in relation to notes, dimensions and landscaping as marked in red on the plan;
- ii) submission of a revised grading plan to the satisfaction of the Commissioner of the Hamilton-Wentworth Engineering Department;
- iii) approval by the Committee of Adjustment for the following variances:
  - 1. to permit a reduced lot width of 20.117 m (65.61 ft.) minimum instead of the required 30.0 m (93.42 ft.) minimum;
  - 2. to permit a northerly side yard of 1.0 m (3.28 ft.) minimum instead of the required 2.01 m (6.56 ft.) minimum;
  - 3. to permit the 6.0 m (20.0 ft.) access driveway to have a zero clearance from the common boundary with the residential district instead of the required 3.0 m minimum;
  - 4. to delete the required 7.5 m minimum rear landscape area where the lot abuts the "A" zoning district;
  - 5. to permit the loading space in the required side yard, 1.5 m minimum from the adjacent residential district instead of the required 7.5 m minimum requirement; and
  - 6. to provide 6 parking spaces on the lot instead of the required 8 parking spaces based upon ratio of office area to warehouse area.

  
V. J. Abraham, M.C.I.P.  
Director of Local Planning

### BACKGROUND

Plans have been submitted for a (2) two storey warehouse and office complex at 64 Ewen Road having a gross floor area of 924.7 m<sup>2</sup>, with (6) six parking spaces and (1) one loading space on the lot. The building will be constructed of architectural concrete block and vertical metal siding with some architectural detailing around the doors and windows of the front facade. A landscape treatment will be provided along Ewen Road.

Various modifications are required to the plan related to notes and dimensions and have been marked in red on the plans.

The Hamilton-Wentworth Engineering Department has advised that the grading plan requires clarification and modifications according to their comments. Furthermore, all vegetation within a 3 m x 3 m daylight triangle between the access and the property line should not exceed a mature height of 0.3 m above the centre line elevation of Ewen Road. A revised grading plan should therefore be submitted to the satisfaction of the Commissioner of the Hamilton-Wentworth Engineering Department.

The Traffic Department has advised by their attached letter that there is inadequate manoeuvring room for a single unit truck on the site. The applicant has indicated that only small trucks or vans will be using the facility.

The Building Department has advised by their attached letter that this development proposal presents several variances to the Zoning By-law.

The Planning and Development Department has reviewed the plans submitted and the various department comments and forwards the following comments:

1. The present parcel of land was created in 1964 while the lands were zoned "J" (Industrial) District and did not require a minimum lot width. Subsequently, the area was rezoned under a City Initiative from "J" (Industrial) to "M-14" (Prestige Industrial) District which requires a minimum lot width of 30.0 m. The variance to reduce the lot width from 30.0m to 20.117 m can be supported since it is an existing situation.
2. A variance to reduce the side yard to 1.0 m minimum, adjacent the industrial lot to the north, would allow a greater separation between the industrial building and the adjacent residential district to the south.



3. In order to provide a 6.0 m minimum access driveway a variance to permit an "0" clearance from the common boundary with the residential district will be required. Since the driveway will be separated from the adjacent residential district by a 1.5 m high solid wood privacy screen, and the building will only be operated during regular business hours and will have manned security control, the variance can be supported.
4. In order to provide parking and loading spaces at the rear of the property, a variance will be required to delete the 7.5 m minimum landscape area where the lot abuts the "A" zoning district. Since the adjacent lands in the "A" zoning district are Hydro lands, and since a portion of the required landscaped area will be maintained as a result of the parking and loading area, the variance can be supported.
5. Due to the narrow lot width and in order to provide the required loading space and parking spaces at the rear of the property, a variance will be required to reduce the setback to 1.5 m minimum from the adjacent residential district, instead of the required 7.5 m minimum. Since the loading space will be screened from the adjacent residential district by a 1.5 m high solid wood privacy screen and cedar trees, the variance can be supported.
6. The applicant's agent has discussed the parking requirement with the Building Department and has indicated that 8 spaces are required as opposed to 6 spaces provided. The Building Department has advised that a floor plan, showing the ratio of office area to warehouse area, will have to be submitted in order to determine the actual number of required parking spaces. Since this is an in/out type of storage operation, and an abundance of parking is not necessary, the variance which is minor in nature can be supported.

In conclusion, the variances can be supported based upon the above noted comments.

JL:s/ma  
0217P





Regional Municipality of Hamilton-Wentworth  
Planning and Development Department

## Drawing No.



FROM

Roland Karl

DEPARTMENT

Traffic

DATE

1989 03 09

SUBJECT

Joe Lakatos

Planning &amp; Development Review

DA-88-60

64 Ewen Road

MESSAGE

This memo will confirm that we would support a variance to reduce the parking from the required 8 spaces to 6 spaces.

J. Givier

A 10-E or D 5905 (250 pkg.) D 4905 (50 pkg.)

REPLY FROM

DATE

S-marque®

INTER-OFFICE MEMO

TO REPLY: RETAIN WHITE ORIGINAL — RETURN PINK





**THE CORPORATION OF THE CITY OF HAMILTON**  
DEPARTMENT OF BUILDINGS  
HAMILTON, ONTARIO

PRESENT ZONING: "M-14/S-759 and S/759a"

DATE: December 19, 1988

Mr. V.J. Abraham  
Director of Local Planning  
Planning and Development Department

Dear Sir:

RE: DA-88-60  
66 Ewen Road

The above, under cover of your letter dated November 24, 1988, has been examined.

Yours truly,

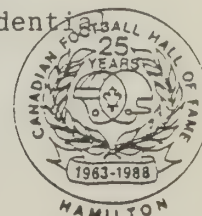
for the Building Commissioner

/dm

COMMENTS:

1. ✓ A lot width of 30.0m is required. Shown is 20.117m.
2. ✓ A 2.01m northerly side yard is required if the Committee of Adjustment approves a reduced lot width of 20.117m instead of the required 30.0m. Shown is 1.0m.
3. ✓ The driveway shall be a minimum 3.0m from the common boundary with the residential district.
4. ✓ A driveway is not permitted in the required front yard. [By-law 83-224, Section 1.(2)(b)].
5. ✓ A 7.5m landscaped area is required where the lot abuts an "A" zoning district (rear property line).
6. ✓ An office use is permitted if incidental to the warehouse use only, providing it does not exceed 25% of the gross floor area.
7. ✓ Parking is subject to the requirements of Section 18A of Zoning By-law #6593 (no floor plan submitted).
8. The loading space shall be a minimum 7.5m from the abutting residential district. **FOR INFORMATION SEE BY: 83-229.**

TO	FROM
DATE	FILE NO.
REMARKS	
DEC 23 1988	
JPS	
KB	





Department of Engineering  
71 Main Street West, Hamilton, Ont. L8N 3T4 (416) 526-4170

FOR ACTION

REPORT TO: SUSAN REEDER, SECRETARY  
PLANNING AND DEVELOPMENT COMMITTEE

FROM: J. D. THOMS, COMMISSIONER  
PLANNING AND DEVELOPMENT DEPARTMENT

DATE: 1989 March 21  
COMM FILE:  
DEPT. FILE: DA-88-99  
(ZA-87-136)  
Allison  
Neighbourhood

SUBJECT:

Site Plan Control Application DA-88-99 for an automobile dealership at 1645 Upper James Street, Hamilton.

RECOMMENDATION

That approval be given to Site Plan Control Application DA-88-99 by Chrysler Canada Ltd., owners of lands known as 1645 Upper James for an automobile dealership subject to the following:

- i) modification to the plans in relation to notes, dimensions, and loading spaces, as marked in red on the plans;
- ii) dedication to the Region of Hamilton-Wentworth of approximately 3.048 m (10 ft.) of land, along Upper James Street, for the purpose of a road widening.
- iii) dedication to the City of Hamilton of the appropriate lands and the provision of the necessary agreements to establish the pedestrian walkway along the southerly property line and to provide all cost associated with the proposed upgrading of the walkway to be the responsibility of the owner/applicant.
- iv) submission of a revised landscape plan to the satisfaction of the Director of Local Planning, Planning and Development Department.

  
Victor J. Abraham, M.C.I.P.  
Director of Local Planning

Approved On: \_\_\_\_\_

**BACKGROUND**

Plans have been submitted for a new and used car dealership at 1645 Upper James Street. The development proposes a gross floor area of 2718.05 m<sup>2</sup> (29,257.80 sq.ft.) consisting of a ground floor of 2326.70 m<sup>2</sup> (25,045.20 sq.ft.) and a mezzanine area of 391.35 m<sup>2</sup> (4,212.00 sq.ft.). The development will provide parking for 290 cars and a landscape treatment along Upper James Street and the perimeter of the property.

Various modifications are required to the plan related to notes, dimensions and loading spaces, as marked in red on the plans.

The Hamilton-Wentworth Engineering Department has advised that as a condition of site plan approval, sufficient lands are required to be dedicated to the Region for road widening purposes to establish the property line 18.29 m (60 ft.) from the centre line of construction on Upper James Street. Also, a portion of the existing walkway, located along the southerly boundary, must be closed and a new portion opened to establish the required 3.0 m opening onto Allison Crescent. Thus, as a condition of approval, the applicant will be required to dedicate to the City of Hamilton, the appropriate lands and provide the necessary agreements to establish the pedestrian walkway along the southerly property line. All costs associated with the proposed upgrading of the walkway are to be at the expense of the applicant/owner.

The traffic island located across from the most northerly access point of the property will have to be removed, asphalt installed, and painted as a left turn lane. The costs associated with the island removal are the responsibility of the applicant/owner.

All vegetation within 3.0 m of the access driveways to Upper James Street shall be no higher than 0.80 m above the corresponding centre line elevation of Upper James Street. All fencing shall be recessed a minimum of 3.0 m from the Upper James Street road allowance.

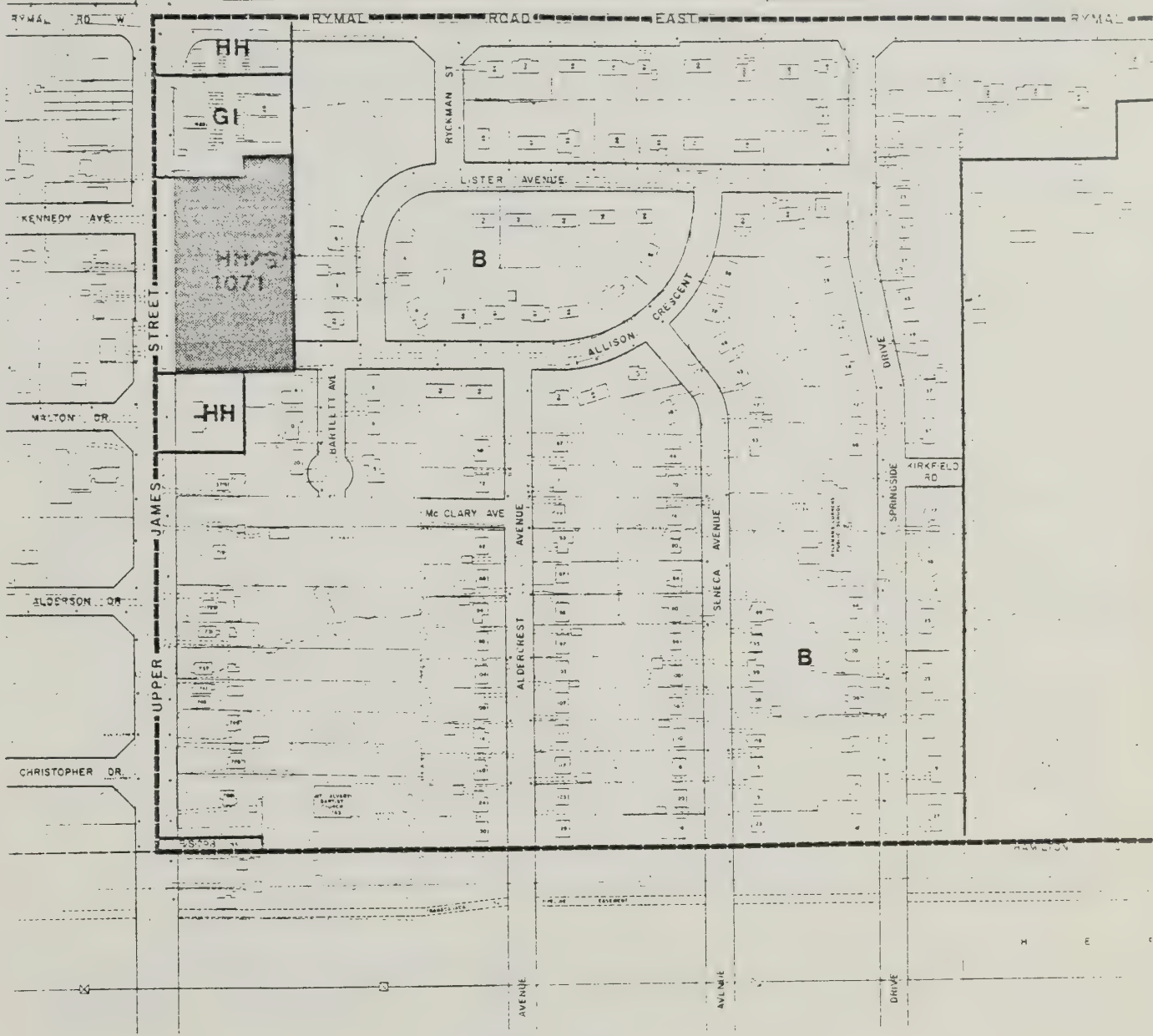
The Building Department has advised that the development will require 74 parking spaces which must conform to the minimum By-law requirements. The additional parking may be provided as per the proposed dimensions, which are slightly smaller.

The development also requires two loading spaces, 18.0 m x 3.7 m x 4.3 m and the location of the loading spaces should not obstruct easy access to and egress from the required parking space [Section 18A(22) and (23)]. The loading spaces should be revised accordingly or as indicated in red on the plan.

The Planning and Development Department has advised that the proposed landscape treatment seems to concentrate on low growing shrubs and vines. This treatment could be improved by the introduction of deciduous and coniferous tree varieties to enhance the site and the neighbourhood. Deciduous tree types, such as a Sugar Maple, or Green Ash could provide a unifying element to the overall landscape treatment, while coniferous tree types, such as a Colorado Blue Spruce or Norway Spruce could serve as an accent or specimen planting. A revised landscape treatment should be submitted to the satisfaction of the Director of Local Planning, Planning and Development Department.

JL/ma  
WP0319P





ALLISON Nº 6

PLAN SHOWING  
LANDS SUBJECT TO

SITE PLAN CONTROL  
APPLICATION DA-88-99

Regional Municipality of Hamilton-Wentworth  
Planning and Development Department

Legend



SITE OF THE APPLICATION



North

Scale  
1:5,000

Date  
AUG., 1988

Reference File No.  
DA-88-99

Drawing No.





7.

Corporation of the City of  
Memorandum

\*\*\*\*\*

TO: Mr. V. Abraham  
Director of Local Planning  
Attention: Mr. J. Sakala

YOUR FILE:

FROM: Susan K. Reeder, Secretary  
Planning and Development Committee

OUR FILE:  
PHONE: 526-2753

SUBJECT: Site Plan Control Application DA-88-126,  
for a pylon sign at 568 James Street North.

DATE: 1989 March 9

This will confirm that the Planning and Development Committee at its meeting held Wednesday, 1989 March 1 APPROVED the following recommendation:

That Site Plan Control Application DA-88-126 by Mr. Zygmund Cwierzdzinski, owner of lands known as 568 James Street North for a pylon sign BE DENIED for the following reasons:

- (a) the pylon sign would be out of character with the surrounding low profile residential development and existing streetscape;
- (b) approval would set an undesirable precedent for future applications for pylon signs along James Street North;
- (c) it is contrary to the intent of the Neighbourhood Shopping District which permits only a "business identification sign that is a wall sign".

As you are aware the Committee was also in receipt of a letter from Mr. Cwierzdzinski asking that this matter be tabled as he was unable to attend the meeting.

A copy of that request is herewith attached for your information. The Committee however agreed that this matter BE DENIED.

Would you please ensure that the appropriate action is taken with respect to this matter.

SKR:dbm  
Attch.  
b.c.c. - Sandi Newton

February 28, 1989

Memo to: Ms. Susan Reeder, Secretary, Planning & Development Committee

From: Ziggy Cwierzdzinski

RE: 574 JAMES STREET NORTH FILE NO. DA 88126

I would request that this matter be tabled as I cannot attend the meeting.

Thank you.

FOR ACTION

REPORT TO: SUSAN REEDER, SECRETARY  
PLANNING AND DEVELOPMENT  
COMMITTEE

DATE: 1989 February 9  
COMM FILE:  
DEPT FILE: DA-88-126  
Northend East  
Neighbourhood  
(DA-87-70)

FROM: J. D. THOMS, COMMISSIONER  
PLANNING AND DEVELOPMENT DEPARTMENT

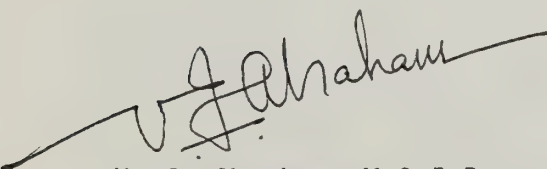
SUBJECT:

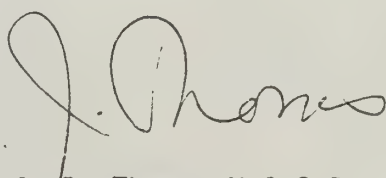
Site Plan Control Application DA-88-126 for a pylon sign at 568 James Street North.

RECOMMENDATION

That Site Plan Control Application DA-88-126 by Mr. Zygmund Cwierdzinski, owners of lands known as 568 James Street North for a pylon sign be denied for the following reasons:

- i) the pylon sign would be out of character with the surrounding low profile residential development and existing streetscape;
- ii) approval would set an undesirable precedent for future applications for pylon signs along James Street North.
- iii) it is contrary to the intent of the Neighbourhood Shopping District which permits only a business identification sign that is a wall sign.

  
V. J. Abraham, M.C.I.P.  
Director of Local Planning

  
J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development Department

**BACKGROUND**

Plans have been submitted for a Tenant Identification Pylon Sign at 568 James Street North. The sign will be a total of 7.5 m (25 ft.) high and 3.0 m (10.0 ft.) wide. It will be located on the northwest corner of the property approximately 3.0 m (10' - 0") from the James Street north property line and 1.5 m (5' - 0") from Burlington Street.

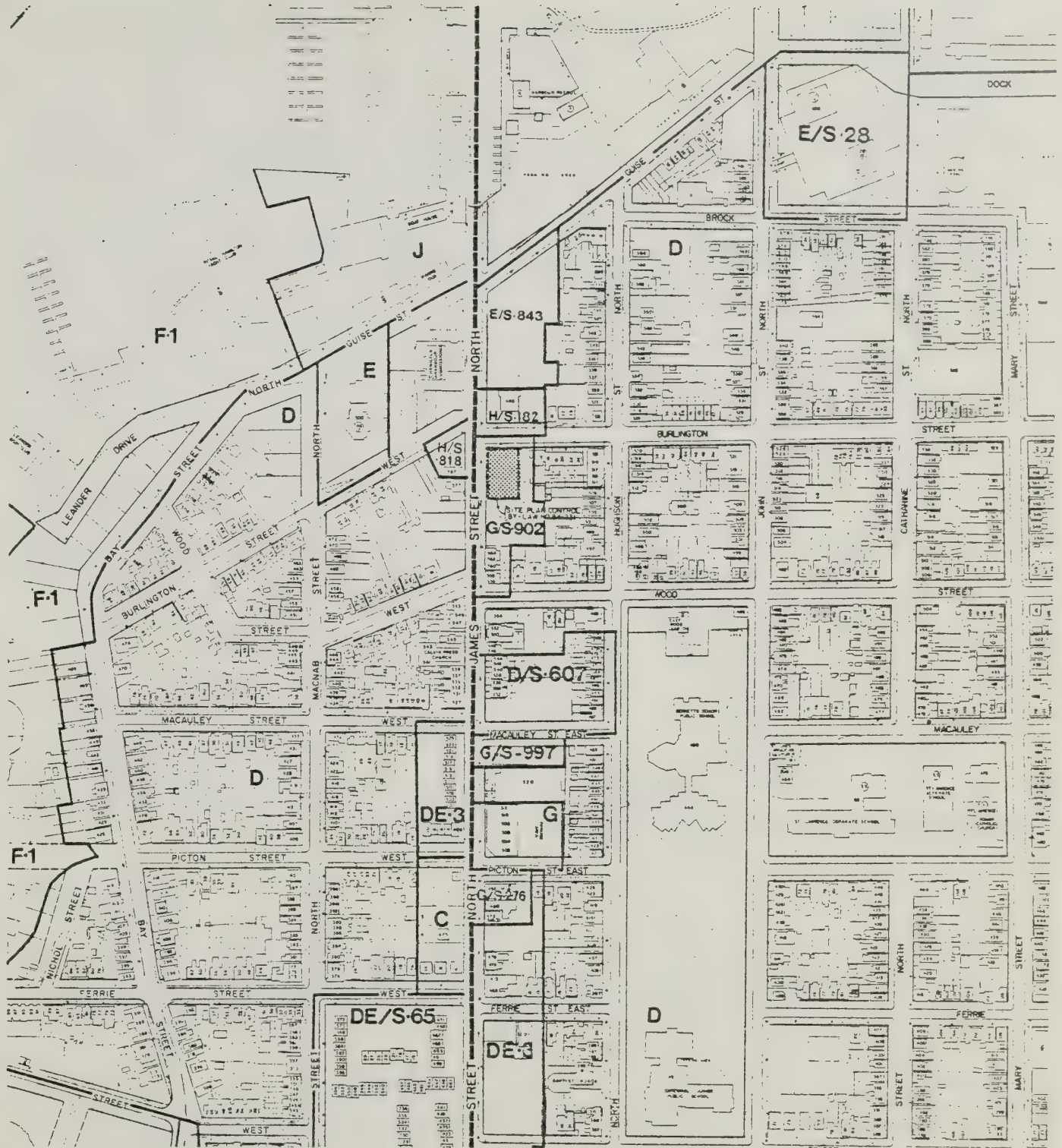


## CONCLUSION

This application cannot be supported for a number of reasons. The surrounding residential neighbourhood is comprised primarily of low rise development. Thus, such a 7.5 m pylon sign would be highly visible and out of character with the neighbourhood environment. The existing neighbourhood plaza is intended to primarily serve the residents of the immediate area. If this application is approved, an undesirable precedent would be set for future applications for similar pylon signs along James Street North. This would be detrimental to the overall streetscape of James Street North.

A variance to the By-law would be required for the pylon sign. The lands are zoned "Neighbourhood Shopping District" which permits only wall signs for business identification. The proposed pylon sign is therefore contrary to the intent of this zoning district.

JL/ma  
WP0319P



NORTH END WEST No. 107

NORTH END EAST No. 106

City of Hamilton  
Plan Showing  
Lands Subject to  
**Site Plan Control**  
**Application DA-88-126**

Regional Municipality of Hamilton-Wentworth  
Planning and Development Department

Legend



Site of the Application

North



Scale  
1:5000

Date  
November 1988

Reference File No.  
DA-88-126

Drawn By  
E.S.



FOR ACTION

REPORT TO: SUSAN REEDER, SECRETARY  
PLANNING AND DEVELOPMENT COMMITTEE

FROM: J. D. THOMS, COMMISSIONER  
PLANNING AND DEVELOPMENT DEPARTMENT

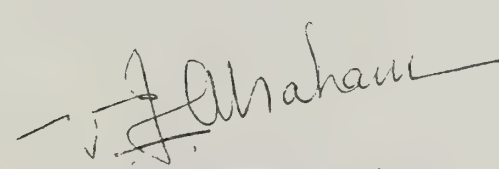
DATE: 1989 March 21  
COMM FILE:  
DEPT. FILE: P5-4-2-18

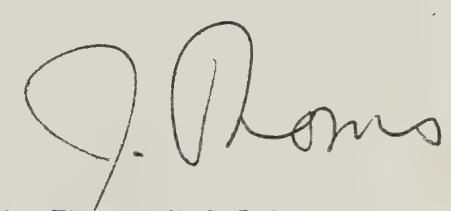
SUBJECT:

Housing Intensification Studies - Neighbourhood Surveys

RECOMMENDATION

That the Planning and Development Committee authorise the circulation of a Housing Intensification Neighbourhood Survey.

  
V. J. Abraham, M.C.I.P.  
Director of Local Planning

  
J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development Department

BACKGROUND

- Data collection for that the Housing Intensification Study started in January 1989. The funding for the study (75% Provincial) allows for carrying out neighbourhood surveys. The survey proposal is supported by the steering committee made up of Provincial and City representatives.
- The purpose of the proposal is to gauge residents attitudes to apartment conversion for Beasley/Central (north of downtown), Homeside (west of the Centre Mall) and Bruleville (west of Limeridge Mall). The potential supply of conversions to apartments could be measured.

Beasley/Central is the proposed PRIDE improvement area where additional funding for housing intensification has been requested. Homeside is a "C" residential zoned area with some apartment conversion rights where parking is not a major problem (because of the existence of rear alleys). Bruleville also has "C" residential zoning but, having been built after 1940, does not have apartment conversion rights. Greater numbers of people living near to Limeridge Mall is desirable from the planning viewpoint.



- The survey would involve a questionnaire to households living in single semi or duplex units in each of the neighbourhoods. The survey would cost in the region of \$1,500 which is already budgeted. It is expected the survey would be carried out in April 1989.
- Although data is available from other sources, it is important to have Hamilton related material. The results will be used to consider possible changes to the zoning by-law. It would be used by staff, the Steering Committee, the Planning and Development Committee, Council and possibly the O.M.B. (if any changes to the zoning by-law are appealed). Apartment conversions could make a contribution to the provision of more affordable housing.

DG/dkp

WP 0021P

FOR ACTION

REPORT TO: SUSAN REEDER, SECRETARY  
PLANNING AND DEVELOPMENT COMMITTEE

FROM: J. D. THOMS, COMMISSIONER  
PLANNING AND DEVELOPMENT DEPARTMENT

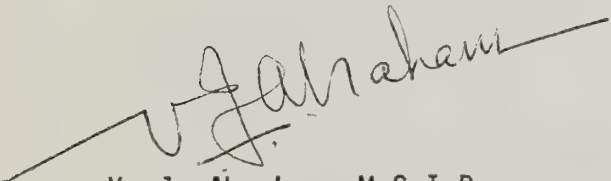
DATE: 1989 March 22  
COMM FILE:  
DEPT. FILE: P5-4-7-9  
CENTRAL AREA PLAN  
IMPLEMENTATION COMMITTEE

SUBJECT:

Central Area Plan Implementation Committee - Terms of Reference.

RECOMMENDATION

That the attached updated and revised Central Area Plan Implementation Committee Terms of Reference and the list of members attached as Appendix "A", be accepted and approved.

  
V. J. Abraham, M.C.I.P.  
Director of Local Planning

  
J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development Department

FINANCIAL IMPLICATIONS

N/A

BACKGROUND

The Central Area Plan Implementation Committee (CAPIC) was initially formed in 1983 to assist and advise staff in the implementation of the Central Area Plan. Since 1984 CAPIC has undertaken a major review of the Central Area Plan, which was adopted by Council in 1988 as Official Plan Amendment No. 66. Terms of Reference have been drawn up to guide CAPIC in the implementation of the revised Central Area Plan (1988). These Terms of Reference are based upon those established in 1983 (see page 4 of attached letter) and clarify CAPIC's mandate, membership, and administrative matters.

MEH/dkp

WP 0021P

## CENTRAL AREA PLAN IMPLEMENTATION COMMITTEE

### DRAFT TERMS OF REFERENCE

The mandate of the Committee is to advise the Planning and Development Committee on planning matters relating to the Central Area, including:

- o The Central Area Plan, its update and revision;
- o Strategies for implementing the policies of the Central Area Plan;
- o Acting as a sounding board for development proposals;
- o Co-ordinating initiatives in the Central Area;
- o Monitoring Central Area matters;
- o Supplying representatives to other committees to give a Central Area point of view.

### Administrative

- o The committee will be made up of representatives of organizations and individuals who together form a knowledgeable and balanced group. See Appendix "A" for current membership.
- o Changes in membership will be submitted by CAPIC to the Planning and Development Committee for approval.
- o A Chairperson and Vice-Chairperson will be elected by CAPIC, one of whom will be a member of City Council.
- o The Planning and Development Department will be responsible for co-ordinating the Committee.

### Background

- o The Central Area is identified as the area bounded by Queen Street, Victoria Avenue, the Escarpment and the Bay.
- o During 1979 and 1980, the Central Area Plan Advisory Committee prepared the Central Area Plan.
- o In 1981, City Council adopted the plan.
- o In 1983, City Council identified the need for a policy-oriented committee to implement the plan.

- o The Central Area Plan Implementation Committee (CAPIC) was formed by Council in February, 1984, to concentrate on policy issues and their implementation.
- o Since 1984, CAPIC has undertaken a major review of the Central Area Plan.
- o Additionally, CAPIC has provided advice to the Planning and Development Committee on an ongoing basis.
- o In 1988, City Council approved the revised Central Area Plan and it is in the process of being incorporated it into the Official Plan.

D.G.:nd  
W.P. DOC. 0021P

Revised March, 1989



CENTRAL AREA PLAN IMPLEMENTATION COMMITTEE

MEMBERS

Alderman David Christopherson (Chairperson) - Planning and Development  
Committee

Reverend Charles Forsyth (Vice-Chairperson) - First Place

Mark Boyak - Hamilton Real Estate Board

David Cohen - Corktown-Stinson Neighbourhood Association

Gloria DeSantis - Social Planning and Research Council

Russell Elman - Durand Neighbourhood

Gabriel Etele - Downtown Business Improvement Area

John Eyles - McMaster University

Ozzie Ferguson - United Senior Citizens

Arthur Lomax - Hamilton Automobile Club

Kay Nolan - Hamilton-Wentworth Roman Catholic School Board

Bruce Rankin - Hamilton Society of Architects

Gil Simmons - North End Neighbourhood

Trustee Anne Stewart - City of Hamilton

Ken Stone - Hamilton and District Labour Council

Marvin Wasserman - King East Business Association

January 26, 1989



THE REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH

Planning and Development Department  
71 Main Street West, Hamilton, Ontario L8N 1C1

December 12, 1983

TO: The Chairman and Members  
of the City of Hamilton  
Planning and Development Committee

SUBJECT: Central Area Plan Implementation

RECOMMENDATIONS

1. That Council endorse the Central Area Plan Implementation Strategy as a major product in the Planning and Development's 1984 work program.
2. That a Central Area Plan Implementation Committee be formed to oversee and direct the Central Area Plan Implementation Strategy.

EXPLANATORY NOTE

Because of the magnitude, importance and range of activities underway and planned in the Central Area, a system is required to determine priorities, assess impacts and provide strategies. The overall objective is to implement the policies of the Central Area Plan. A Committee of vested interests will assist staff in the implementation process.

Respectfully submitted,

(Original signed by V. J. Abraham)

V. J. Abraham, M.C.I.P.  
Director of Local Planning

J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development

VJA:RC:pp

Attachments

## BACKGROUND

The Central Area Plan was adopted by the City of Hamilton in January, 1981. It expressed new philosophies:

- that the Central Area should be promoted as the Regional Centre;
- that quality, people-oriented buildings and streetscaping should be introduced into the Central Business District to attract further growth;
- that mixed use development should be encouraged;
- that through traffic on King Street should be discouraged, and that a ring of car parks be established;
- that anchors along King Street East be established as counterpoints to Jackson Square; and,
- that the downtown be given priority for public investment, particularly the area east of James Street.

Staff generated a number of policies, based on these concepts, but no official body was appointed to carry through the implementation. However, a staff/political/business committee was set up at the request of downtown businessmen. This committee conceived the Downtown Action Plan. The du Toit group prepared the Downtown Action Plan focussing on three main issues - streetscaping in the downtown area, especially Gore Park, reduction of traffic on King Street East, and a promotion strategy for downtown business. This committee dissolved after the completion of the Plan. It was felt that perhaps the committee should have continued, but the Central Area Co-ordinating and Implementing Committee was formed to address certain important aspects of the Central Area Plan. This committee spawned the Downtown Action Plan and has also dissolved. It now seems appropriate to set up an advisory committee of vested interests to continue implementation of the Central Area Plan.

## NEED FOR AN IMPLEMENTATION STRATEGY

Implementation of the Downtown Action Plan is a major step in revitalizing the downtown. Implementation has started on a number of the recommendations; e.g., Phase 1 street beautification, tourism promotion and co-ordination of business interests. Other recommendations in the Downtown Action Plan and additional activities are required to achieve the goals of the Central Area Plan.

Also, various projects are already underway, such as the arena/trade centre or the Sheraton Hotel, or in the planning stages, such as the location of the new bus terminal and the GO-ALRT route and station, which will create definite impacts on traffic, parking, transit, and new development. The effects of these projects must be carefully assessed, planned for and optimized within the overall context of the Central Area Plan's objectives.

Because of the importance of planning and co-ordination of all downtown activities and developments, a downtown development strategy is required. This "strategy" would serve to implement the Central Area Plan which provides the philosophy, but not the means to implement it.

### AREA OF STUDY

A downtown strategy would cover the core from Queen to Wellington Streets and Cannon Street to the T.H.&B. with a bit of James Street North and South tacked on. This area coincides with recent downtown monitoring activities. A number of downtown plans are available from other cities for comparison. The Strategy would be developed within the context of the entire Central Area.

### ISSUES TO BE ADDRESSED

The Central Business District Strategy would address such issues as:

- o Parking,
- o Traffic,
- o Transit,
- o Residential development,
- o Heritage,
- o Promotion,
- o Monitoring,
- o New development, etc.

Within the context of the downtown's goals as the commercial centre, a people place, a vibrant, healthy community and a good location for private investment.

The strategy would also recommend priorities for expenditure, to be fed into the budget system. In this way, ongoing expenditures in the Central Area can be properly co-ordinated. At the moment, separate bodies are deciding priorities on an ad hoc basis. Sometimes decisions are at odds with one another. Planning and co-ordination are the key.



### AN IMPLEMENTATION COMMITTEE

A committee drawn from various interest groups, in the same way as the Central Area Plan Advisory Committee, should be established to assist and advise City staff in the recommendation of the strategy and priorities.

The Committee would be responsible for the development of a Central Business District Strategy. It would also function on an ongoing basis as an advisory body reviewing all major proposals in the downtown. The Committee should also initiate monitoring of downtown activities and development, promotion of the Central Area, and a downtown inventory of available commercial space. A number of other projects mentioned in the Central Area Plan and the Downtown Action Plan require follow-up.

Representation on the Committee, possibly called the Central Area Plan Implementation Committee (CAPIC) should be drawn from:

- o The Chamber of Commerce;
- o The Business Improvement Areas and other business interests;
- o L.A.C.A.C.;
- o Durand Neighbourhood;
- o Other neighbourhood representatives;
- o Social agencies;
- o Transport interests;
- o Educational agencies;
- o City Aldermen; and,
- o Others as recommended.

CONCLUSION

CAPIC is essential to ensure good planning and co-ordination of future downtown activities and development. The Committee, composed of vested interests in the downtown area, will ensure that proper weight is given to the impacts of all new activities in the downtown and that these impacts are considered prior to development taking place. Full implementation of the Central Area Plan, and all that it entails for a better Hamilton, is the intended result. The committee would, by its recommendations, steer the growth and development of the area to produce a central area for the future of which all can be proud.

0241P  
:CS



F O R   A C T I O N

10.

REPORT TO:        SUSAN REEDER, SECRETARY  
                     PLANNING AND DEVELOPMENT COMMITTEE

FROM:             J. D. THOMS, COMMISSIONER  
                     PLANNING AND DEVELOPMENT DEPARTMENT

DATE: 1989 March 16  
COMM FILE:  
DEPT. FILE: ZA-88-122  
                 Kennedy East  
                 Neighbourhood

SUBJECT:

Request for a change in zoning - lands in the area south of Rymal Road West, and west of Christie Street.

RECOMMENDATION

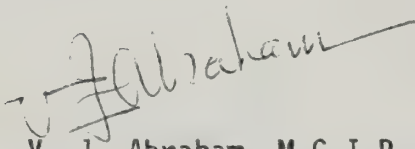
- (a) That approval be given to Official Plan Amendment No.        to redesignate the subject lands from "MAJOR INSTITUTIONAL" and "OPEN SPACE" to "RESIDENTIAL", and the City Solicitor be directed to prepare a By-law to amend the Official Plan for submission to the Regional Municipality of Hamilton-Wentworth.
- (b) That approval be given to Zoning Application 88-122, Wardpark Developments Inc., owner, requesting a change in zoning from "AA" (Agricultural) District to "C" (Urban Protected Residential, etc.) District to permit a subdivision for single-family detached dwellings, for property located in the area south of Rymal Road West and west of Christie Street, as shown on the attached map marked as APPENDIX "A", on the following basis:
- i)    That the subject lands be rezoned from "AA" (Agricultural) District to "C" (Urban Protected Residential, etc.) District;
  - ii)   That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593 and Zoning District Maps W-9E and W-17E for presentation to City Council;
  - iii) That the proposed change in zoning will be in conformity with the Official Plan for the Hamilton Planning Area upon the approval of Official Plan Amendment No.        by the Regional Municipality of Hamilton-Wentworth.

EXPLANATORY NOTE

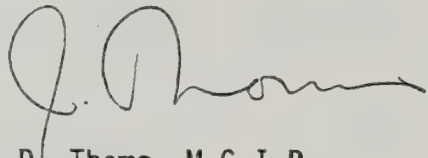
The purpose of the By-law is to provide for a change in zoning from "AA" (Agricultural) District to "C" (Urban Protected Residential, etc.) District for lands located in the area south of Rymal Road West and west of Christie Street, as shown on the attached map marked as APPENDIX "A".



The effect of the By-law is to permit the subdivision of the subject lands into building lots for single-family detached dwellings.



V. J. Abraham, M.C.I.P.  
Director of Local Planning



J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development Department

#### FINANCIAL IMPLICATIONS

N/A

#### APPLICANT

Wardpark Developments Inc., owner.

#### BACKGROUND

- Proposal

The applicant proposes to subdivide the lands into 69 lots for single-family dwellings, and has requested a change in zoning from "AA" (Agricultural) District to "C" (Urban Protected Residential, etc.) District.

- Draft Plan of Subdivision

At its meeting of November 20, 1988 the Planning and Development Committee approved a proposed Draft Plan of Subdivision ("South Hill") on the affected lands subject to, among others, the following conditions:

- "a) That this draft plan of subdivision not receive draft approval before an appropriate amendment to the Hamilton Official Plan is approved by Hamilton-Wentworth Regional Council.
- b)5. That the final plan conform with the Zoning By-law approved under the Planning Act."

The resolution was subsequently adopted by City Council on December 13, 1988.

#### LOT SIZE AND AREA

The lands are located south of Rymal Road and west of Christie Street, and have an area of 4.0 ha (10 acres).

## LAND USE AND ZONING

	<u>EXISTING LAND USE</u>	<u>EXISTING ZONING</u>
<u>SUBJECT LANDS</u>	Vacant	"AA" (Agricultural) District
<u>SURROUNDING LANDS</u>		
to the north	Vacant and single-family dwelling	"C" (Urban Protected Residential, etc.) District
to the south	Vacant	"AA" (Agricultural) District
to the east	Vacant and single-family dwelling	"C" (Urban Protected Residential, etc.) District, and "B" (Suburban Agriculture and Residential, etc.) District
to the west	Single-family dwelling and vacant (St. Elizabeth Village)	"DE" (Low Density Multiple Dwellings) District, modified

## OFFICIAL PLAN

The subject lands are designated "MAJOR INSTITUTIONAL" and "OPEN SPACE" on Schedule "A" - Land Use Concept of the Official Plan.

The following policies set out the uses permitted within the "MAJOR INSTITUTIONAL" designation:

- "2.6.1 The primary uses permitted in the areas exceeding .4 hectare in size designated on Schedule "A" as MAJOR INSTITUTIONAL, will consist of cultural facilities, health, welfare, educational, religious, and governmental activities and related uses...
- 2.6.5 Notwithstanding the policies set out above, in areas designated MAJOR INSTITUTIONAL USES, Residential uses may be permitted provided they are compatible with the surrounding area".

Based on Policy A.2.6.5, the proposed residential uses can be permitted in the "MAJOR INSTITUTIONAL" designation. However, they are not permitted within the "OPEN SPACE" designation.

Consequently, an amendment would be required to redesignate the "OPEN SPACE" portion of the subject lands to "RESIDENTIAL". Furthermore, the "MAJOR INSTITUTIONAL" portion should be similarly redesignated to reflect the intended use.

## NEIGHBOURHOOD PLAN

The subject lands are designated "SINGLE AND DOUBLE RESIDENTIAL" in the approved Kennedy East Neighbourhood Plan. The proposal complies.

## RESULTS OF CIRCULARIZATION

- o The following agencies have no comment of objection:
  - LACAC;
  - Building Department;
  - Niagara Peninsula Conseryation Authority;
  - Traffic Department.
- o The Hamilton-Wentworth Department of Engineering has advised as follows:

"... public watermains are available on Rymal Road to service the subject land. Storm and sanitary sewers are not available at this time.

In conjunction with this application, the applicant has also submitted the "South Hill" draft plan of subdivision".

## COMMENTS

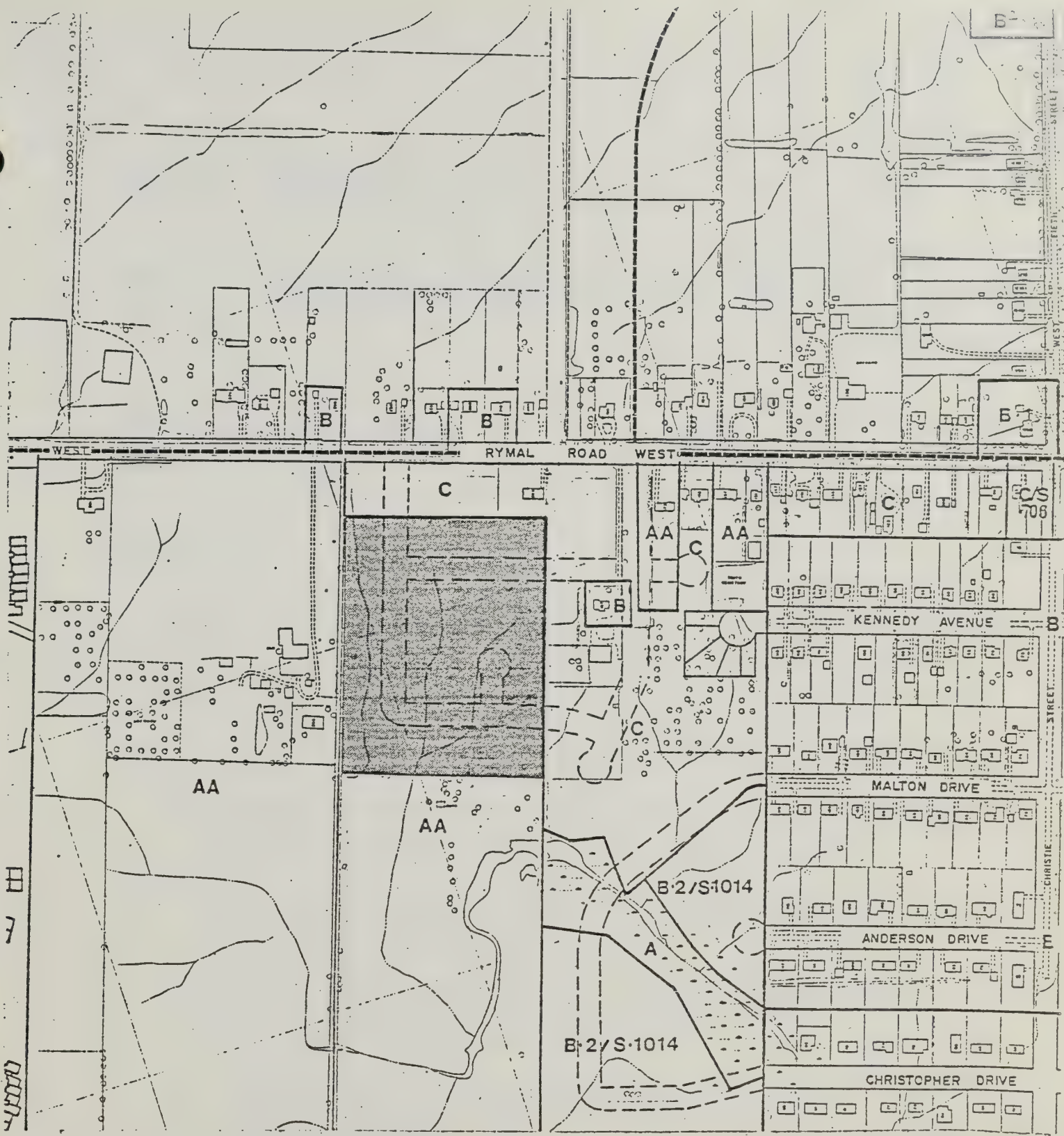
1. The proposal does not comply with the intent of the Official Plan. Approval of the application would necessitate an amendment to redesignate the lands from "MAJOR INSTITUTIONAL" and "OPEN SPACE" to "RESIDENTIAL".
2. The proposal complies with the intent of the approved Kennedy East Neighbourhood Plan.
3. The proposal has merit and can be supported for the following reasons:
  - o it implements the intent of the approved Neighbourhood Plan which designates the subject lands for "SINGLE AND DOUBLE" residential use;
  - o it would be compatible with existing and future intended uses in the surrounding area;
  - o it would fulfill Council's condition respecting the approval of a proposed draft plan of subdivision on the subject lands ("South Hill").
3. With respect to the Department of Engineering's comment that storm and sanitary sewers are not available at this time, it should be noted that as a condition of draft approval, the Plan cannot receive final approval before "...the storm and sanitary sewer system as well as municipal water services are available to service this plan of subdivision".

Accordingly, approval of the zoning at this time would not facilitate development of the lands without services.

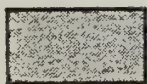
## CONCLUSION

On the basis of the foregoing, the application can be supported.





# LEGEND



SITE OF THE APPLICATION







F O R   A C T I O N

REPORT TO:        SUSAN REEDER, SECRETARY  
                     PLANNING AND DEVELOPMENT COMMITTEE

FROM:            J. D. THOMS, COMMISSIONER  
                     PLANNING AND DEVELOPMENT DEPARTMENT

DATE: 1989 March 21  
COMM FILE:  
DEPT. FILE:    ZA-88-132  
                     Grayside  
                     Neighbourhood

SUBJECT:

Request for a change in zoning - southerly part of property known as Nos. 294 - 298 Lake Avenue North.

RECOMMENDATION

That approval be given to Zoning Application 88-132, B. and K. Willgren, owners, for a change in zoning from the "JJ" (Restricted Light Industrial) District to the "KK" (Restricted Heavy Industrial) District, for the southerly part of property known as Nos. 294 - 298 Lake Avenue North, as shown on the attached map marked as APPENDIX "A", on the following basis:

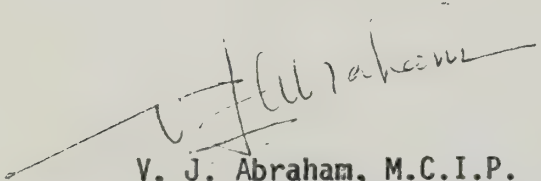
- i) That the subject lands be rezoned from "JJ" (Restricted Light Industrial) District to "KK" (Restricted Heavy Industrial) District;
- ii) That the "KK" (Restricted Heavy Industrial) District regulations as contained in Section 17A of Zoning By-law No. 6593 be amended to include the following variance as a special provision:
  - a) That notwithstanding Section 17A(1)(3) and Section 16A(3)(c) a rear yard of a width of at least 7.6 metres (24.9 feet) shall be provided and maintained;
- iii) That the amending By-law be added to Section 19B of Zoning By-law No. 6593 as Schedule S- , and that the subject lands on Zoning District Map E-113 be notated S- ;
- iv) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593 and Zoning District Map E-113 for presentation to City Council;
- v) That the proposed change in zoning is in conformity with the Official Plan for the Hamilton Planning Area.

### EXPLANATORY NOTE

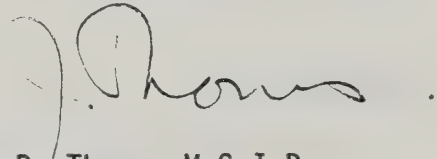
The purpose of the By-law is to provide for a change in zoning from the "JJ" (Restricted Light Industrial) District to the "KK" (Restricted Heavy Industrial) District, for the southerly part of property known as Nos. 294 - 298 Lake Avenue North, as shown on the attached map marked as APPENDIX "A".

The effect of the By-law is to establish uniform zoning on the subject property, for a warehouse and machine shop use.

In addition, the By-law requires that a minimum 7.6 m (24.9 ft.) wide rear yard be provided, whereas no rear yard is normally required.



V. J. Abraham, M.C.I.P.  
Director of Local Planning



J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development Department

### FINANCIAL IMPLICATIONS

N/A.

### BACKGROUND

On November 24, 1988, the applicant purchased a parcel of land at the rear of Nos. 294 - 298 Lake Avenue North from the City of Hamilton.

The applicant wishes to expand his existing machine shop operation and warehouse facility located at No. 298 Lake Avenue North, onto the subject lands (294 Lake Avenue North).

### APPLICANT

B. and K. Willgren, owners.

### LOT SIZE AND AREA

An irregularly shaped parcel of land having approximately:

- o 30.288 m (99.370 sq ft.) of lot frontage on Lake Avenue North;
- o 142.986 m (469.115 sq.ft.) of lot depth; and,
- o 0.41 ha (1.01 acres) of lot area.

## LAND USE AND ZONING

<u>SUBJECT LANDS</u>	<u>EXISTING LAND USE</u>	<u>EXISTING ZONING</u>
	residential with warehousing and machine shop	"JJ" (Restricted Light Industrial) District
<u>SURROUNDING LANDS</u>		
to the north	single-family dwelling	"KK" (Restricted Heavy Industrial) District
to the south	single-family dwelling	"JJ" (Restricted Light Industrial) District
to the east and west	vacant	"JJ" (Restricted Light Industrial) District

## OFFICIAL PLAN

Designated for "INDUSTRIAL" use on Schedule "A" - Land Use Concept Plan of the Official Plan, and located within "SPECIAL POLICY AREA 11" on Schedule "B" of the Official Plan. The following policies, among others, apply:

- "A.2.3.1 The primary uses permitted in the areas designated on Schedule "A" as INDUSTRIAL will be for industry. In this regard, Industry is defined as manufacturing, processing, warehousing, repair and servicing.)
- A.2.3.13 The LIGHT INDUSTRIAL category applies to those Industrial Uses that have a minimal impact on surrounding land uses, and as set out in Subsection A.2.9.3, are shown on Schedule "B" as Special Policy Area 11. Generally, LIGHT INDUSTRIAL USES will be encouraged to concentrate in a designed community-like precinct such as the East Mountain Industrial Park.
- A.2.3.14 The primary uses permitted in this category may include, but not be limited to: warehousing, light manufacturing and assembly, laboratories and research facilities, communication facilities and printing and publishing plants".

In addition, the subject property abuts lands designated Open Space on Schedule "A", and Hazard Lands on Schedule "C".



As set out in the following policy, for any redevelopment proposed on the subject lands, it is intended that the applicant make reference to the "flood-" and "fill-line" mapping approved by the Conservation Authority:

"A.3.1.1 Certain areas within the City of Hamilton which form a part of the Open Space designation on Schedule "A" are recognized as having inherent environmental hazards such as flood and erosion susceptibility. These areas are only schematically shown as HAZARD LANDS on Schedule "C" to this plan. Accordingly, it is intended that a proponent for redevelopment or development purposes abutting on, or within HAZARD LANDS make reference to the "flood-" and "fill-line" mapping approved by the appropriate Conservation Authority for precise delineation".

Based on the above, the proposal complies with the intent of the Official Plan.

#### NEIGHBOURHOOD PLAN

A neighbourhood plan is not available for the Grayside Neighbourhood.

#### COMMENTS RECEIVED

o The following agencies have no comment or objection:

- LACAC; and,
- Traffic Department.

o The Building Department has advised as follows:

"The maximum permitted floor area for office and sales area combined is 15% of the building floor area."

o The Hamilton Region Conservation Authority has advised as follows:

"The subject lands are traversed by a remnant tributary of Battlefield Creek. According to current floodline mapping, this portion of the property is subject to Ontario Regulation 617/86, the Fill and Construction Regulations of the Hamilton Region Conservation Authority (see APPENDIX "B"). Any proposal to alter existing grades within the regulated area will require a permit issued by the Conservation Authority pursuant to said regulation.

It appears from the information provided that the rear lot line of the property is at the top of bank associated with the ravine of Battlefield Creek. According to authority guidelines relating to ravine, a 25 foot setback from the rear lot line is required. No additional placement of fill is permitted beyond the rear lot line.

Based on the above, the planning staff of the Hamilton Region Conservation Authority has no objection to the rezoning subject to the following:

1. That the proposed "KK" Zone include a 25 foot building setback from the rear lot line."
- o The Engineering Department has advised as follows:  
  
"Public watermains and separate storm and sanitary sewers are available to service the subject land.

According to our records, there is a pool within the Lake Avenue road allowance. If this pool still exists today within the road allowance, as widened, an encroachment agreement is required by the City. The fence in the road allowance remains at the risk of the applicant/owner."

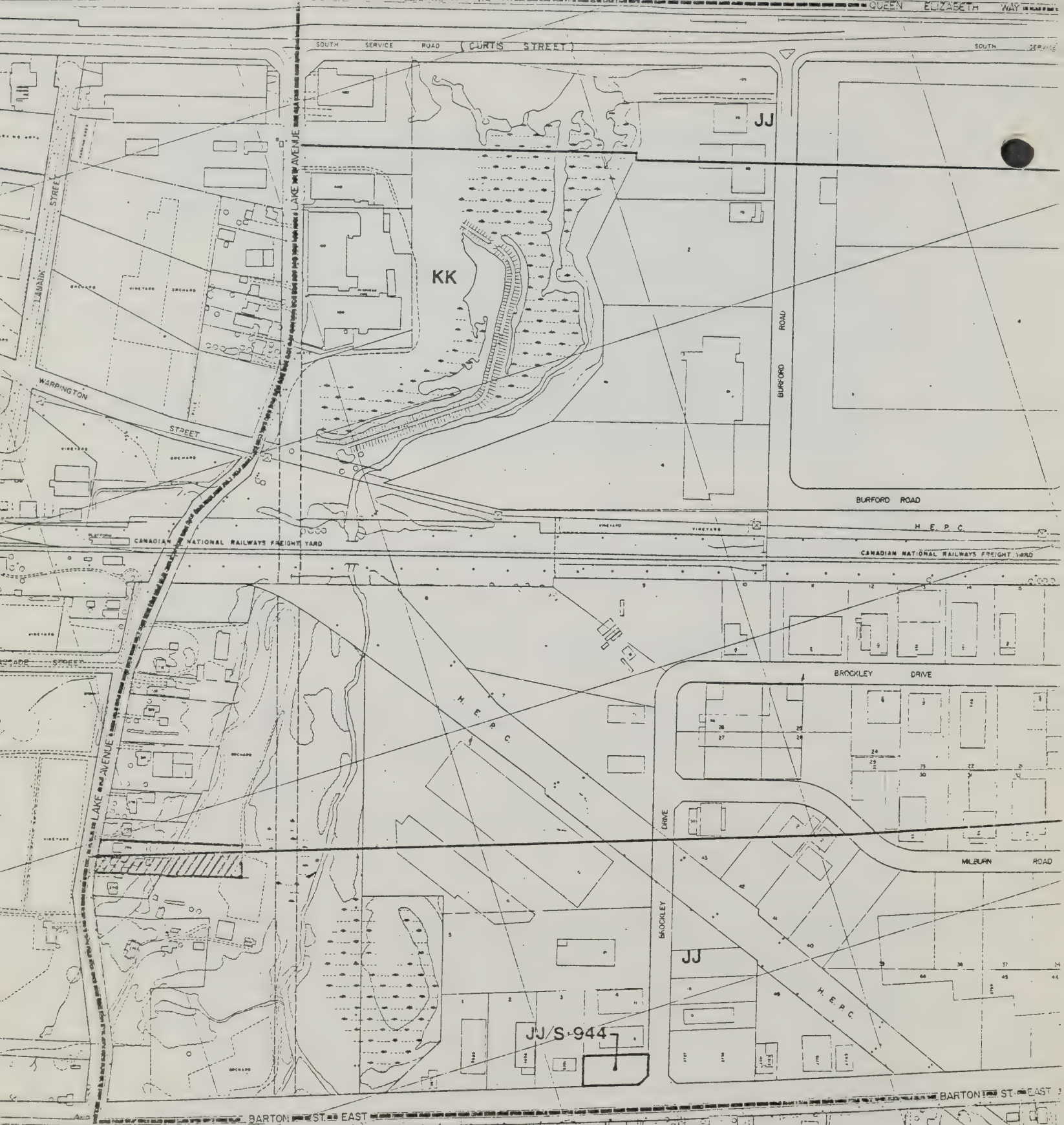
#### COMMENTS

1. The proposal complies with the intent of the Official Plan.
2. The proposal has merit and can be supported for the following reasons:
  - o it implements the intent of the Official Plan which designates the lands for "INDUSTRIAL" use;
  - o it is for the expansion of an existing operation that appears to have existed harmoniously with existing uses in the surrounding area, and would be compatible with future intended development (industrial);
  - o it will result in uniform zoning for the entire subject property; and
  - o it is no less feasible than other uses permitted as-of-right under the established "JJ" (Restricted Light Industrial) District (i.e. welders shop, tinsmiths shop, etc.).
3. In keeping with the request of the Hamilton Region Conservation Authority, a 7.6 metre (25 foot) setback from the rear lot line should be provided to protect the ravine of Battlefield Creek.

#### CONCLUSION

On the basis of the foregoing, the application can be supported.

MS/ma/CS  
WP0372P



# LEGEND.



SITE OF THE APPLICATION.

<p>SCALE 50'</p>		<p>PAGE NO 54</p>
<p>PLANNING UNIT NO 6409</p>	<p>2488-132</p>	

APPENDIX "A"



FOR ACTION

12.

REPORT TO: SUSAN REEDER, SECRETARY  
PLANNING AND DEVELOPMENT COMMITTEE

FROM: J. D. THOMS, COMMISSIONER  
PLANNING AND DEVELOPMENT DEPARTMENT

DATE: 1989 March 21  
COMM FILE:  
DEPT. FILE: ZA-88-110  
AINSLEE WOOD WEST  
NEIGHBOURHOOD

SUBJECT:

Request for a modification to the existing zoning - property located at the rear of No. 1880 Main Street West.

RECOMMENDATION

1. That approval be given to Zoning Application 88-110, Hamilton and District Senior Citizens' Home, "Rambynas" Incorporated, owner, for a modification to the established "A" (Conservation, Open Space, Park and Recreation) District, for property located at the rear of No. 1880 Main Street West, as shown on the attached map marked as APPENDIX "A", on the following basis:
  - i) That the "A" (Conservation, Open Space, Park and Recreation) District regulations as contained in Section 7 of Zoning By-law No. 6593, as amended by By-law 82-148, applicable to the lands described as Block "1", be further modified to include the following variances:
    - a) Notwithstanding Section 7.(1) of By-law No. 6593, a parking lot shall be permitted on the lands described as Block "1" in conjunction with the existing Home for Elderly Persons located on lands at No. 1880 Main Street West described as Block "2";
    - b) Notwithstanding Section 18A (24)(b)(i) of Zoning By-law No. 6593, the access driveway shall have a width of not less than 3.0 m;
    - c) That Sections 18A(11) & (12) shall not apply;
  - ii) That the amending By-law be added to Section 19B of Zoning By-law No. 6593 as Schedule S-793a, and that the subject lands on Zoning District Map W-51 be notated S-793a;
  - iii) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593 and Zoning District Map W-51 for presentation to City Council;



- iv) That the proposed change in zoning is in conformity with the Official Plan for the Hamilton Planning area.
2. That Schedule "B" to By-law No. 79-275, as amended by By-law No. 87-223, respecting Site Plan Control be amended by adding the subject lands thereto.
3. That the amending by-law not be passed by City Council until the applicant has applied for and received Site Plan approval. In addition, the applicant is required to provide a survey plan showing the exact limits of the property.

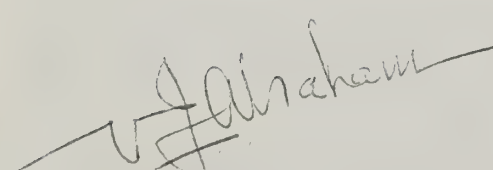
#### EXPLANATORY NOTE

The purpose of the By-law is to provide for a modification to the "A" (Conservation, Open Space, Park and Recreation) District for property located at the rear of No. 1880 Main Street West, as shown on the attached map marked as APPENDIX "A".

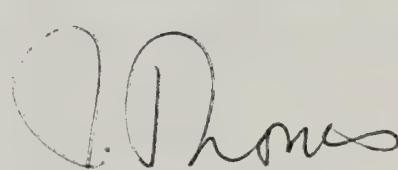
The effect of the By-law is to permit a parking lot on the lands described as Block "1" in conjunction with the existing Home for Elderly Persons located on the lands described as Block "2".

In addition, the By-law provides for the following by-law variances:

- to permit an access driveway having a minimum width of 3.0 m, whereas 5.5 m is required (Section 18A(24)(b)(i));
- to exempt the development from providing a 1.5 m landscaped planting strip, and a 1.2 m high to 2.0 m high visual barrier along the boundary of the parking lot adjoining the residential districts (Sections 18A(11) and (12)).



V. J. Abraham, M.C.I.P.  
Director of Local Planning



J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development Department

#### FINANCIAL IMPLICATIONS

N/A.

#### BACKGROUND

It is the applicant's intention to establish a parking lot containing eight parking spaces on lands at the rear of the existing senior citizens' apartment building. Access to the parking lot is to be via a 3.0 m wide driveway along and within the northerly side property line. The eight parking spaces are required to alleviate on-site parking problems.

APPLICANT

Hamilton and District Senior Citizens' Home "Rambynas" Incorporated, owners.

LOT SIZE AND AREA OF THE AFFECTED LANDS

The subject lands are irregularly shaped and have approximately:

- 13 m (42.6 ft.) of lot depth;
- 18 m (59.0 ft.) of lot width; and,
- 234 m<sup>2</sup> (2,518.84 sq. ft.) of lot area.

LAND USE AND ZONING

	<u>Existing Land Use</u>	<u>Existing Zoning</u>
Subject lands	Vacant	"A" (Conservation, Open Space, Park and Recreation) District
<u>Surrounding Lands</u>		
to the north	Commercial	"H" (Community Shopping and Commercial, etc.) District
To the south	Vacant	"A" (Conservation, Open Space, Park and Recreation) District and "E" (Multiple Dwellings, Lodges, Clubs, etc.) District
To the east	Seniors' apartment building and a cemetery	"E" (Multiple Dwellings, Lodges, Clubs, etc.) District and "B-1" (Suburban Agricultural and Residential, etc.) District
To the west	Vacant	"A" (Conservation, Open Space, Park and Recreation) District

## OFFICIAL PLAN

Designated "RESIDENTIAL" on Schedule "A" Land Use Concept Plan of the Official Plan. In addition, the property abuts a "HAZARD LANDS" designation on Schedule "C" of the Official Plan. In this regard, the following policy among others would apply:

"A.3.1.1 Certain areas within the City of Hamilton which form a part of the Open Space designation on Schedule "A" are recognized as having inherent environmental hazards such as flood and erosion susceptibility. These areas are only schematically shown as HAZARD LANDS on Schedule "C" to this Plan. Accordingly, it is intended that a proponent for redevelopment or development purposes abutting on, or within, HAZARD LANDS make reference to the "flood-" and "fill-line" mapping approved by the appropriate Conservation Authority for precise delineation."

The proposal would not conflict with the intent of the Official Plan.

## NEIGHBOURHOOD PLAN

Designated for "LOW DENSITY APARTMENTS" on the approved Ainslie Wood West Neighbourhood Plan, the proposal complies.

## COMMENTS RECEIVED

- The Building Department has advised that:
  - "1. Apartment parking is not permitted in this zoning district.
  2. The driveway width shall be 5.5 m (18.0 ft.) wide.
  3. Parking space #5 does not have a manoeuvring area.
- The Traffic Department has advised that:

"While we have no objection to the proposed modification to the zoning, we do have some concerns with the actual parking area. The proposed driveway is only 3.0 m wide, and the zoning by-law requires a two-way traffic driveway to be 6.0 m wide. There is also inadequate maneuvering room in the parking area for cars to turn around, so that they can drive out rather than back out from behind the building."

- The Hamilton Region Conservation Authority has advised that:

"The Planning staff of the Hamilton Region Conservation Authority has considered the above proposal. The subject lands were dealt with previously in connection with an application made under the Conservation Authority fill and construction regulations. At its meeting of October 6, 1988, the Full Authority approved an application to construct a parking lot in accordance with the attached plan, subject to the following conditions:

- 1) That staff be authorized to withhold a permit pending receipt of the following:
  - plans for the parking lot showing existing and final grades and drainage details satisfactory to Authority staff.
  - written proof from the City of Hamilton that the subject lands have been rezoned to permit the proposed parking lot.

Based on the above, the planning staff of the Hamilton Region Conservation Authority has no objection to the approval of the proposal. We recommend that the proposal be subject to site plan control, and further, that the applicant's site plans be circulated to the Conservation Authority for comments."

- The Niagara Escarpment Commission has advised that:

"The subject property is not located within the Niagara Escarpment Development Control Area and only the rearmost portion comprising the floodplain of Coldwater Creek is included in the Niagara Escarpment Plan under the "Escarpment Natural Area" designation. The proposed parking lot is not located within the Niagara Escarpment Plan."

- The Hamilton-Wentworth Engineering Department has advised that:

"Public watermains and separate storm and sanitary sewers are available to service the subject lands.

More detailed comments will be provided at the site plan stage."

- The Local Architectural Advisory Committee staff has no comments.

#### COMMENTS

1. The proposal would not conflict with the intent of either the Official Plan or the approved Ainslie Wood West Neighbourhood Plan.
2. The proposal has merit and can be supported for the following reasons:



- It complies with the intent of both the Official Plan and the approved Ainslie Wood West Neighbourhood Plan.
  - The Hamilton Region Conservation Authority considered this proposal at its meeting held on October 6, 1988, and approved it subject to the submission of a site plan and proof that a rezoning application is approved by the City of Hamilton.
  - It would be compatible with existing and proposed land use in the surrounding area.
3. The preliminary site plan submitted with the application establishes the following by-law variances:
- Access driveway width is only 3.0 m (4.84 ft.) whereas a driveway width of 5.5 m (18.0 ft.) is required (Section 18A (24)(b)). The variance can be supported as there is no alternative access to the rear of the property other than establishing a one-way driveway system around the building which would result in the loss of most of the landscaping.
  - Parking space #5 does not have a manoeuvring area as required by Section 18A (1)(f). This variance cannot be supported. It is suggested that the parking layout be reviewed at the site plan stage of development.
  - A 1.5 m wide landscaped strip and a visual barrier not less than 1.2 m in height and not greater than 2.0 m in height is required along the boundary of the lot abutting the adjoining residential districts (Section 18A (12)(c)), whereas none is proposed. Considering that the parking lot overlooks vacant valley lands, and that there would be no benefit to establishing a landscaped strip or the visual barrier between the adjoining "A" & "E" Districts at this location, the variances can be supported.
4. Given the concerns of the Hamilton Region Conservation Authority, approval of the application should be conditional upon the approval of a site plan. In addition, the applicant should provide a boundary survey for the portion of the site being rezoned. Accordingly, the amending by-law should not be forwarded for Council's approval until these conditions are satisfied.

### CONCLUSION

On the basis of the foregoing, the application can be supported.





ZASS-110

12a.

To whom it May concern.

It really makes me angry to hear someone could even think of using property for something like a parking lot those senior citizens in the Rambynas home have enough parking. What about the kids in this area? There are so many of them & nothing for them to do close by. If you want to do something with the extra Property Put up a Playgroud. I live next door to this property & theres no way I want parking spots there. Thats a waste. Why doesnt anyone ever think of children instead of Seniors for once! Its no wonder kids destroy the insides of apt buildings Because they have no where outside to play. I know a few people in my building also who wish that property would be used for a playground.

I hope something like this can be done very soon & not a stupid parking lot put there.



PROPOSED CHANGE- MODIFICATION TO THE A DISTRICT REGULATIONS  
PROPERTY DESCRIPTION - NO 1880 MAIN STREET WEST

I AM IN FAVOUR OF ( )

OPPOSED TO ☒ (PLEASE CHECK (V) WHICH)

THIS PROPOSED CHANGE

.....  
SPRINGSTEAD JENN OR OCCUPANT  
1928 MAIN W APT 217  
HAMILTON, ONT

LOS 1J4

.....  
FILE-2A88-110      SEQ-00494      .....

*Spangier*  
*Springstead*  
.....SIGNED

PLEASE DIRECT INQUIRIES TO  
PLANNING DEPT. 526-4445

FOR ACTION

13.

REPORT TO: SUSAN REEDER, SECRETARY  
PLANNING AND DEVELOPMENT COMMITTEE

FROM: J. D. THOMS, COMMISSIONER  
PLANNING AND DEVELOPMENT DEPARTMENT

DATE: 1989 March 21  
COMM FILE:  
DEPT. FILE: CI-88-L  
Greenford  
Neighbourhood

SUBJECT:

City Initiative for a modification in zoning - No. 2825 King Street East.

RECOMMENDATION

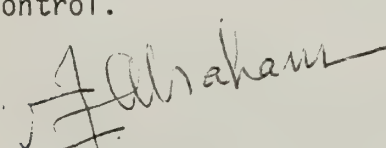
That approval be given to City Initiative 88-L, Regional Municipality of Hamilton-Wentworth, owner, to delete the existing Site Plan for property located at No. 2825 King Street East, as shown on the attached map marked as APPENDIX "A", on the following basis:

- i) That Sections 2, 3 and 4 of By-law No. 66-323, to amend By-law No. 6593, be deleted therefrom;
- ii) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593, as amended by By-law 66-323, and Zoning District Map E-106 for presentation to City Council; and,
- iii) That the proposed By-law is in conformity with the Official Plan for the Hamilton Planning Area.

EXPLANATORY NOTE

The purpose of the By-law is to amend By-law No. 66-323 respecting property located at No. 2825 King Street East, as shown on the attached map.

The effect of this By-law is to delete the existing Site Plan, due to a future road widening along the subject property. It should be noted, that any future development on the remaining subject lands will be subject to Site Plan Control.

  
V. J. Abraham, M.C.I.P.  
Director of Local Planning

  
J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development Department

## FINANCIAL IMPLICATIONS

N/A

## BACKGROUND

### o By-law No. 66-323

On December 20, 1966, City Council passed By-law No. 66-323 which provided for a change in zoning from "HH" (Restricted Community Shopping and Commercial) District and "AA" (Agricultural) District to "E-2" (Multiple Dwellings) District for property known as No. 2825 King Street East. The "E-2" (Multiple Dwellings) District is subject to the requirement of a site plan attached to and forming part of By-law 66-323 and designated as Schedule "B".

The Region of Hamilton-Wentworth recently purchased a road widening of 16.471 m (54.039 feet) from the subject lands. As a result of the widening on King Street East from Highway No. 20 to Nash Road, the site plan attached to and forming part of By-law No. 66-323 was rendered inoperable.

### o Option to Purchase

The Region entered an Option to Purchase with the owner, subject to among others, the following condition:

"Upon receipt of written authorization from the Owner, the Region shall, at its sole expense, make application to the City of Hamilton, to amend the zoning of the Owner's abutting lands to "E-2", as set out in the City of Hamilton's By-law 6593, to reflect the acquisition of the subject lands. The remaining abutting lands referred to above will have attached thereto, a density of 1.19."

## APPLICANT

Regional Municipality of Hamilton-Wentworth, owner.

## LOT SIZE AND AREA

The subject property is an irregularly shaped parcel of land having:

- o 96.299 m (315.94 ft.) of lot frontage on King Street East;
- o 110.651 m (363.03 ft.) of lot depth; and
- o 1.567 ha (3.872 acres) of lot area.

## LAND USE AND ZONING

<u>SUBJECT LANDS</u>	<u>EXISTING LAND USE</u>	<u>EXISTING ZONING</u>
	Vacant	"E-2" (Multiple Dwellings) District, modified
<u>SURROUNDING LANDS</u>		
to the north	Single-family dwellings	"C" (Urban Protected Residential, etc.) District
to the south	Single-family dwellings, fruit market and orchard	"HH" (Restricted Community Shopping and Commercial) District, "HH" (Restricted Community Shopping and Commercial) District, modified and "AA" (Agricultural) District
to the east	Automobile sales lot	"HH" (Restricted Community Shopping and Commercial) District
to the west	Gasoline station	"HH" (Restricted Community Shopping and Commercial) District and "C" Urban Protected Residential, etc.) District

## OFFICIAL PLAN

The subject lands are designated "RESIDENTIAL" on Schedule "A" - Land Use Concept of the Official Plan. Within the "RESIDENTIAL" designation the primary uses permitted are various types of dwellings. The proposal complies with the Official Plan.

## NEIGHBOURHOOD PLAN

The subject lands are designated "MEDIUM DENSITY APARTMENTS" in the approved Greenford Neighbourhood Plan. The proposal complies.

## COMMENTS RECEIVED

o The following agencies have no comment or objection:

- LACAC;
- Hamilton Region Conservation Authority;
- Traffic Department;
- City of Stoney Creek; and,
- Building Department.



- o The Engineering Department has advised that:

"Public watermains and separate storm and sanitary sewers are available to service the subject land.

We have no objection to this application".

#### COMMENTS

1. The proposal complies with the intent of the Official Plan and the approved Greenford Neighbourhood Plan, in that the area is designated "RESIDENTIAL" and "MEDIUM DENSITY APARTMENTS" respectively.
2. The proposal has merit and can be supported for the following reason:
  - o the proposal is to simply delete the existing Site Plan on the subject lands, thereby facilitating the future road widening of King Street East; and,
  - o it fulfills one of the conditions respecting the purchase of the land for the future widening of King Street East.

It should be noted, that development of the subject lands is presently only permitted in accordance with Schedule "B" under By-law No. 66-323. In this regard, the future road widening of King Street East would render the Site Plan (Schedule "B") inoperable, thereby effectively prohibiting future development of the remaining lands.

Accordingly, it is necessary to delete the existing site plan. However, any future development of the remaining lands would be subject to the "E-2" District regulations, and would require the approval of new plans under Site Plan Control By-law 79-275.

#### CONCLUSION

On the basis of the foregoing, the application can be supported.

MPS/ma/nd/s  
WP0372P

AA/S-867

SITE PLAN CONTROL  
BY - LAW 84-147

AA

E-2/S-34

HH

HH

HAMILTON

CITY

LIMITS

G/S-955

G/S-966

HH/S-1007

HH

HH/S-1002

AA

G-3

HERRYRIDGE

CLOSE

VIENNA

STREET

AVENUE

MONTE

MONTE COURT

R-4

RT-10

HERRYRIDGE CLOSE

LEGEND



SUBJECT SITE



PROPOSED ROAD WIDENING



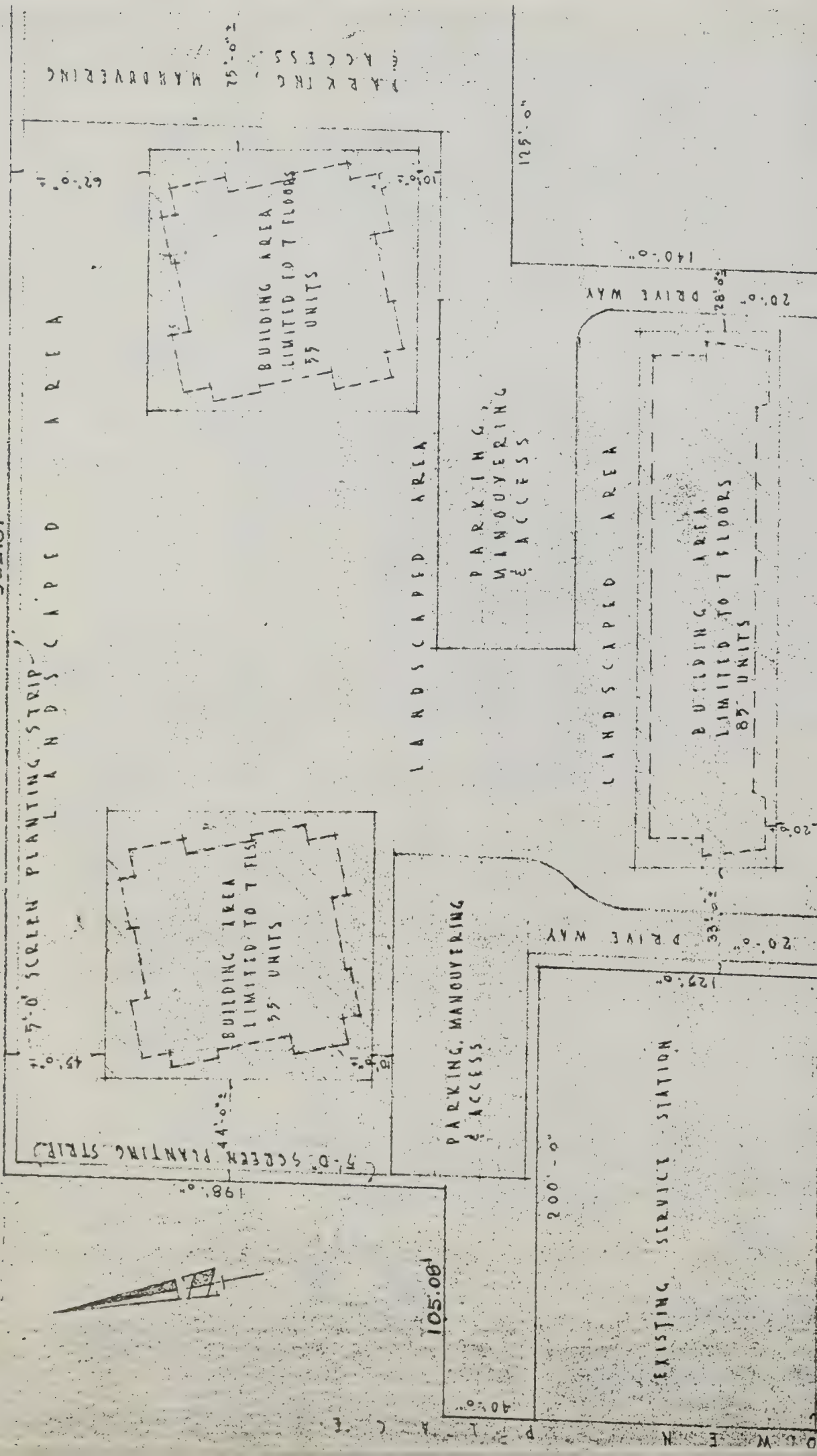
C.I. 88-L

APPENDIX "A"

HIGHWAY N° 20

CENTENNIAL PARKWAY SOUTH

532.37'



KING STREET EAST

315' 81"

# SCHEDULE "B"

MUNRO ALLEN  
20 JACKSON ST. W.  
DUL. N. PILOT



C.I. 88-L

13a.

Planning & Development Committee

MAR 15 1989

re: No. 2825 King Street East proposed amendment to delete the existing Site Plan (Schedule "B") appended to By Law No. 66-323 which was approved on Dec 20, 1966

- ① There was to be no access to Owen Place from this property
- ② With two (2) schools at the end of Owen Place there is a large number of children walking to and from school - the higher the number of cars using Owen Place (if this site has access to Owen Place) the greater the risk to these children
- ③ We do not want possible overflow of visitor or resident parking on our street from this site
- ④ With the development of the new survey south of King there already has been increased traffic flow on this small street (a street that was never meant to be a thru street) and several accidents have occurred at King and Owen Place

*Julie Pearson*  
R.H. Pearson  
23 Owen Place  
Hamilton  
L8G 2H3

Mr. & Mrs. Pearson.





F O R   A C T I O N

14.

REPORT TO:        SUSAN REEDER, SECRETARY  
                         PLANNING AND DEVELOPMENT COMMITTEE

FROM:                J. D. THOMS, COMMISSIONER  
                         PLANNING AND DEVELOPMENT DEPARTMENT

DATE: 1989 March 17  
COMM FILE:  
DEPT. FILE: ZA-88-28  
                         Gourley  
                         Neighbourhood

SUBJECT:

Request for changes in zoning - No. 1002 West 5th Street.

RECOMMENDATION

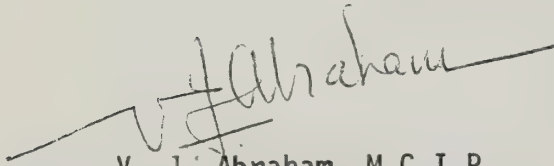
1. That Zoning Application 88-28, G. Marazzato, owner, requesting changes in zoning from "AA" (Agricultural) District to "G-4" (Designed Neighbourhood Shopping Area) District (Block "1") and "C" (Urban Protected Residential, etc.) District (Block "2"), to permit the construction of a 2 storey building having commercial uses on the ground floor (stores, offices) and 3 apartment units on the second floor, and to create 2 building lots for single-family detached dwellings, for lands located at No. 1002 West Fifth Street, as shown on the attached map marked as APPENDIX "A", be DENIED for the following reasons:
  - i) The proposed commercial and apartment development for Block "1", conflicts with the intent of the Official Plan and approved Gourley Neighbourhood Plan which designate the subject lands for "SINGLE AND DOUBLE RESIDENTIAL" use;
  - ii) The proposed commercial and apartment development on Block "1" would be incompatible with existing and proposed single-family residential development on adjoining lands; and
  - iii) Approval of the proposed commercial and residential development on Block "1" would set an undesirable precedent for future similar applications in the surrounding area.
2. That approval be given to amended Zoning Application 88-28, G. Marazzato, owner, for a change in zoning from "AA" (Agricultural) District for lands located at No. 1002 West Fifth Street, as shown on the attached map marked as APPENDIX "B", on the following basis:
  - i) That the subject lands be rezoned from the "AA" (Agricultural) District to the "C" (Urban Protected Residential, etc.) District;
  - ii) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593 and Zoning District Map W-9C for presentation to City Council;

- iii) That the proposed change in zoning is in conformity with the Official Plan for the Hamilton Planning Area.

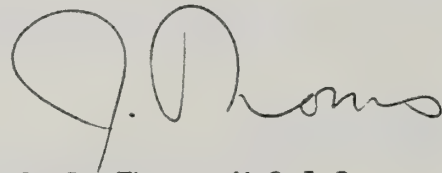
#### EXPLANATORY NOTE

The purpose of the By-law is to provide for a change in zoning from "AA" (Agricultural) District to "C" (Urban Protected Residential, etc.) District for property located at No. 1002 West Fifth Street, as shown on the attached map marked as APPENDIX "B".

The effect of the By-law is to permit development of the subject lands for single-family dwellings.



V. J. Abraham, M.C.I.P.  
Director of Local Planning



J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development Department

#### FINANCIAL IMPLICATIONS

N/A

#### BACKGROUND

##### o Proposal

Request for a change in zoning on the following basis:

Block "1" - from "AA" (Agricultural) District to "G-4" (Designed Neighbourhood Shopping Area) District to permit a two storey building with commercial on the ground floor (e.g. variety store, offices) and 3 apartments on the second floor.

Block "2" - from "AA" (Agricultural) District to "C" (Urban Protected Residential, etc.) District to permit two single-family dwelling building lots.

##### o Consent Application

At its meeting of April 26, 1988 the Land Division Committee approved application H-61-88 to permit the severance of Block "2" (see APPENDIX "A") into two single-family dwelling lots. The approval was conditional upon, among others, the applicant submitting proof of final approval of any necessary change of zoning/zoning amendment.

- ZA-88-83

At its meeting of January 31, 1989 Council passed By-law No. 89-46. The purpose of the By-law is to provide for a change in zoning from the "AA" (Agricultural) District to the "C" (Urban Protected Residential, etc.) District for the adjoining lands to the west (No. 120 Stone Church Road West).

The effect of the By-law is to permit the severance of the property to create two single-family dwellings lots.

- ZA-88-66

At its meeting of March 1, 1989 the Planning and Development Committee approved Zoning Application 88-66 to rezone the adjoining lands to the north (No. 980 West 5th Street), from the "AA" (Agricultural) District to the "C" (Urban Protected Residential, etc.) District. The effect of the application was to permit the creation of two single-family dwelling lots.

- ZA-76-05

At its meeting of February 24, 1976 Council refused a zoning application to permit a day care centre on the subject lands.

### APPLICANT

Giovanni Marazzato, owner.

### LOT SIZE AND AREA

The subject property is located at the north-west corner of Stone Church Road West and West Fifth Street, and has approximately:

	<u>Block "1"</u>	<u>Block "2"</u>	<u>TOTAL</u>
• Frontage on Stone Church Road West	36.6 m (120 feet)	24.4 m (80 feet)	61 m (200 feet)
• Frontage on West Fifth Street	39.6 m (130 feet)	N/A	39.6 m (130 feet)
• Lot Area	1,449 m <sup>2</sup> (15,600 sq.ft.)	966 m <sup>2</sup> (10,400 sq.ft.)	2,415 m <sup>2</sup> (26,000 sq.ft.)

### LAND USE AND ZONING

	<u>EXISTING LAND USE</u>	<u>EXISTING ZONING</u>
<u>SUBJECT LANDS</u>	Residential and small engine repair shop	"AA" (Agricultural) District



### SURROUNDING LANDS

to the north	Single-family residential	"AA" (Agricultural) District
to the south	Single-family residential and vacant	"AA" (Agricultural) District
to the east	Vacant	"AA" (Agricultural) District
to the west	Single-family residential	"C" (Urban Protected Residential, etc.) District-pending By-law approval

### OFFICIAL PLAN AND NEIGHBOURHOOD PLAN

The subject lands are designated "RESIDENTIAL" on Schedule "A" - Land Use Concept of the Official Plan. The following policies, among others, apply:

- "2.1.1 The primary uses permitted in the areas designated on Schedule "A" as RESIDENTIAL will be for dwellings. Various types of dwellings are included within this designation, while preference will be given to the locating of similar densities of development together.
- 2.1.3 Within areas designated RESIDENTIAL, land uses compatible to dwellings and deemed necessary by Council to serve the needs of local residents will be permitted, including, but not limited to:
  - iv) Limited individual or groups of commercial uses on sites not exceeding .4 hectare in area, excluding Automobile Service Stations, in accordance with the Local Commercial Uses and General Provisions set out in Subsection A.2.2 of this Plan.
- 2.2.27 It is not the intent of Council that the LOCAL COMMERCIAL category be included within the Commercial classification indicated on Schedule "A" to this Plan. Rather, it is the intent of Council that LOCAL COMMERCIAL uses may be permitted within the Residential designation of land use indicated on Schedule "A", subject to a specific application for an appropriate amendment to the Zoning By-law and without the necessity of amending this Plan. The location of LOCAL COMMERCIAL uses will be designated by Neighbourhood Plans.
- 2.2.28 Notwithstanding the above provisions, when considering new development in this category, Council will give preference to the grouping of individual LOCAL COMMERCIAL uses in suitable locations to prevent the scattering of such establishments throughout Residential areas".

In addition, the subject lands are designated "SINGLE AND DOUBLE RESIDENTIAL" on the approved Gourley Neighbourhood Plan. Accordingly, the proposed single-family residential development on Block "2" complies with the Official Plan and the approved Neighbourhood Plan. However, the proposed commercial/residential development on Block "1" does not comply with the intent of the Official Plan or Neighbourhood Plan. Approval of the application would necessitate an amendment to the approved Neighbourhood Plan to redesignate Block "1" to "COMMERCIAL AND APARTMENTS".

#### RESULTS OF CIRCULARIZATION

- The following agencies have no comment of objection:

- LACAC;
- Hamilton Region Conservation Authority.

- The Building Department has advised as follows:

"The property is subject to the "G-4" Intensity of Use requirements and if the professional offices are medical, they will be subject to Section 18A, Table 1 4.(a) parking conditions".

- The Hamilton-Wentworth Department of Engineering has advised as follows:

"...public watermains as well as sanitary and storm sewers are available to service the subject lands.

The designated road allowance width of Stone Church Road is 30.48 m (100 ft.) of West 5th Street is 30.48 m (100 ft.) and a 12.19 x 12.19 m (40 x 40 ft.) daylight triangle at the north-west angle of the intersection. As a condition of development approval, we recommend the following:

1. Sufficient lands to be dedicated to the Region to establish the property line 15.24 m (50 ft.) from the centreline of the original Stone Church Road road allowance.
2. Sufficient lands to be dedicated to the Region to establish the property line 15.24 m (50 ft.) from the centreline of the original West 5th Street road allowance.
3. Sufficient lands to establish a 12.19 m x 12.19 m (40 x 40 ft.) daylight triangle dedication to the Region established from the widened limits of Stone Church Road and West 5th Street.

The plans submitted by the applicant should be revised to reflect the above information.

According to the preliminary plans submitted, the manoeuvring and parking spaces for the development will be located within the road allowance, as widened. We advise that parking, manoeuvring, etc. should be relocated to private property and the setbacks for the property taken from the widened limits of the road allowance. Any other work within the road allowance must conform to the Region's Road Use By-law.

Comments from the City of Hamilton Traffic Department should be considered with respect to the actual access design. The applicant should be advised that future construction of Stone Church Road and West 5th Street may include the provision of raised concrete median islands which may restrict access to these lands. Access to the lands shown as Block 2 must be to the far west as possible..."

#### COMMENTS

1. The proposed residential development of Block "2" complies with the intent of the Official Plan and approved Gourley Neighbourhood Plan. However, the proposed commercial/residential development for Block "1" conflicts with the intent of both Plans. In this regard, approval of the application would necessitate an amendment to the approved Neighbourhood Plan to redesignate Block "1" from "SINGLE AND DOUBLE RESIDENTIAL" to "COMMERCIAL AND APARTMENTS", thereby bringing the proposal into compliance with the Official Plan.
2. Although the proposed single-family residential development on Block "2" has merit, the application as submitted cannot be supported for the following reasons:
  - the proposed commercial/residential development (Block "1" - APPENDIX "A") conflicts with the intent of the Official Plan and the recently approved Gourley Neighbourhood Plan, which respectively designate the lands "Residential" and "Single and Double Residential". It should be noted, that the subject zoning application was treated as a submission for purposes of the Gourley Neighbourhood Plan review. In this regard, the proposed commercial and apartment development on Block "1" was rejected by Committee and Council on the basis that commercially zoned land is available along Upper James Street Neighbourhoods;
  - the proposed commercial and apartment development on Block "1", would be incompatible with existing and proposed single-family residential development on adjoining lands;
  - approval of the commercial and apartment development on Block "1", would set an undesirable precedent for future similar applications in the surrounding area; and
  - it is questionable as to whether or not Block "1" has sufficient lot area to accommodate the proposed commercial/residential development, in that the proposed parking and manoeuvring spaces are located within the road allowance (see APPENDIX "C").

However, consideration could be given to an amended zoning application to rezone both Blocks "1" and "2" from the "AA" (Agricultural) District to the "C" (Urban Protected Residential, etc.) District. In this regard, the applicant would have to make another application for consent to subdivide Block "1" into building lots.

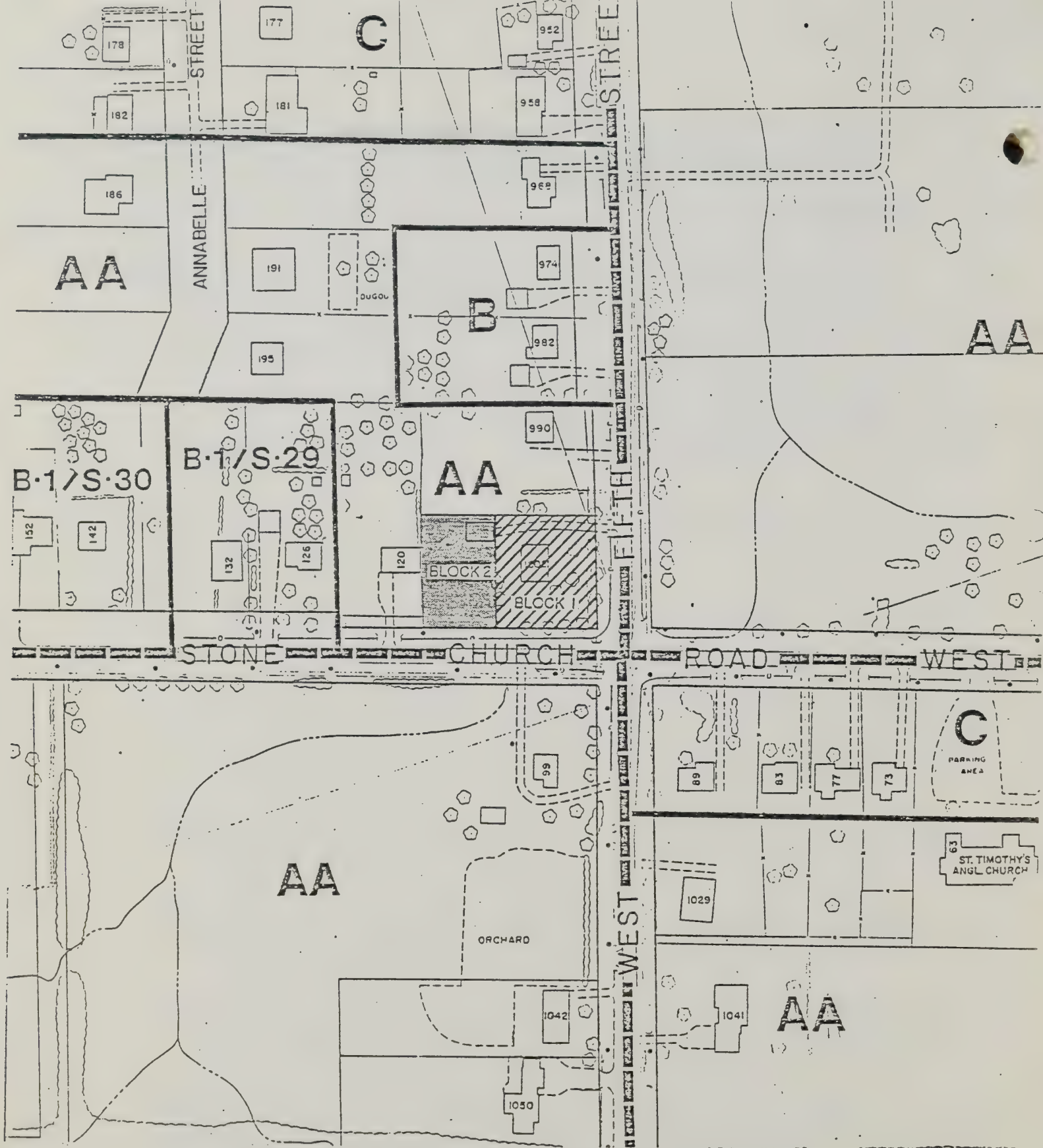
3. The recommendations of the Engineering Department respecting road widenings and the daylight triangle would be acquired under the conditions of land severance approval (H-61-88).

### CONCLUSION

On the basis of the foregoing, the application as submitted should be denied. However, approval could be given to an amended application to rezone the subject lands to "C" (Urban Protected Residential, etc.) District.

PDM/ma  
WP0217P





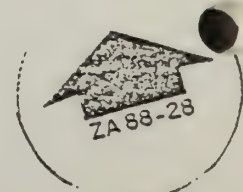
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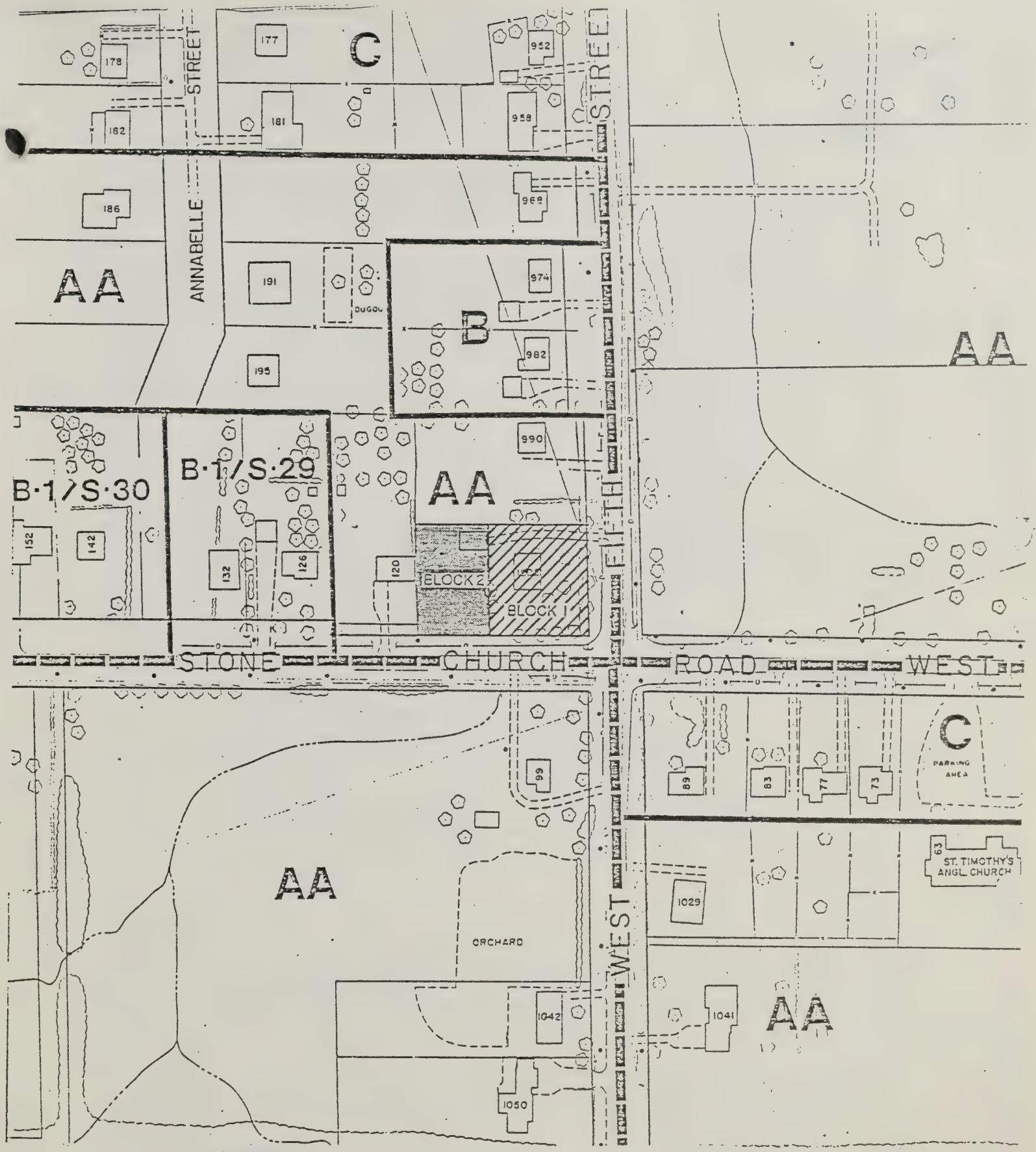
Proposed change in zoning from "AA" (Agricultural) District to:



"G-4" (Designed Neighbourhood Shopping Area) District, MODIFIED.

"C" (Urban Protected Residential, etc.) District





Legend

Proposed change in zoning from "AA" (Agricultural) District to:



"C" (Urban Protected Residential, etc.) District



WEST FIFTH STREET

WEST ELEVATION  
SCALE 1/8" = 1'-0"

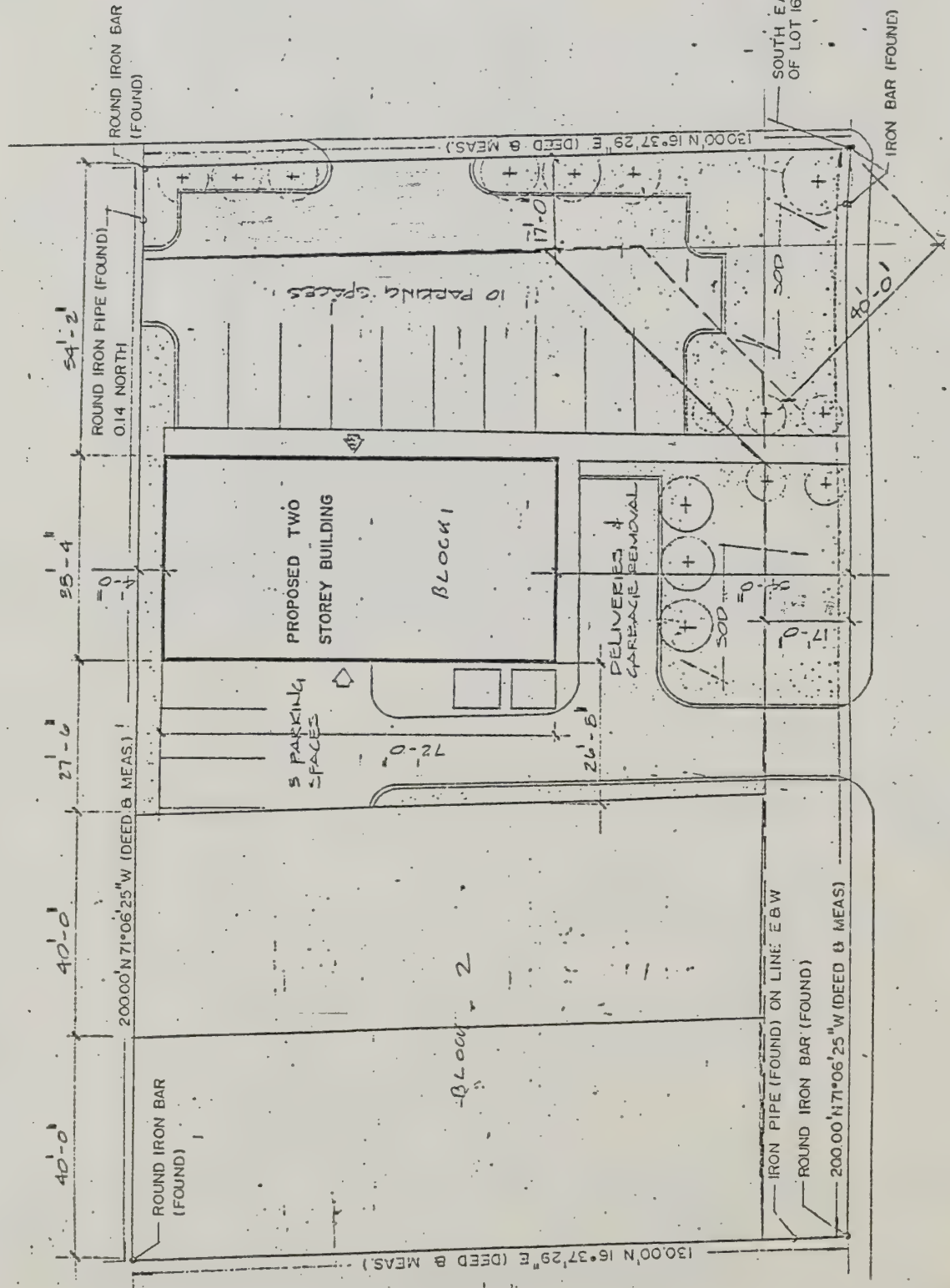
WEST FIFTH STREET

LOT AS  
BUILDING  
BUILDING  
PARKING

N

SOUTH EASTERN CORNER  
OF LOT 16 - CONCESSION 7

SITE PL  
SCALE 1" = 1'-0"



STONECHURCH ROAD WEST

APPENDIX C



FOR ACTION

15.

REPORT TO: SUSAN REEDER, SECRETARY  
PLANNING AND DEVELOPMENT COMMITTEE

FROM: J. D. THOMS, COMMISSIONER  
PLANNING AND DEVELOPMENT DEPARTMENT

DATE: 1988 March 22  
COMM FILE:  
DEPT. FILE: ZA-89-03  
Central  
Neighbourhood

SUBJECT:

Request for a change in zoning - 13 Cannon Street West.

RECOMMENDATION

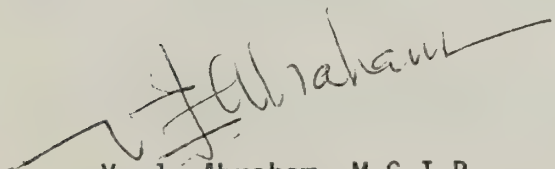
That approval be given to Zoning Application 89-03, John Cvetkovic, owner, for a change in zoning from "L-c" (Planned Development-Commercial) District to "H" (Community Shopping and Commercial, etc.) District for the property located at 13 Cannon Street West, as shown on the attached map marked as Appendix "A", on the following basis:


- i) That the subject lands be rezoned from "L-c" (Planned Development-Commercial) District to "H" (Community Shopping and Commercial, etc.) District;
- ii) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593 and Zoning District Map W-4 for presentation to City Council; and,
- iii) That the proposed change in zoning is in conformity with the Official Plan for the Hamilton Planning Area.

EXPLANATORY NOTE

The purpose of the By-law is to provide for a change in zoning from "L-c" (Planned Development-Commercial) District to "H" (Community Shopping and Commercial, etc.) District, for the property located at 13 Cannon Street West, as shown on the attached map marked as APPENDIX "A".

The effect of the By-law is to permit a restaurant on the ground floor and three (3) residential dwellings units within the existing building.

  
V. J. Abraham, M.C.I.P.  
Director of Local Planning

  
J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development Department



## FINANCIAL IMPLICATIONS

N/A

## BACKGROUND

The existing building is partly two and one-half storeys (i.e. front portion) and partly one storey (i.e. rear portion). The applicant has advised that presently there are three residential units (i.e. bachelor units) in the building, having an average floor area of at least 65.0 m<sup>2</sup> (700 sq.ft.). The ground floor of the front portion of the building is currently unoccupied.

The applicant has requested a change in the use of the building to a mixed commercial-residential use on the following basis:

- a restaurant on the unoccupied portion of the ground floor at the front of the building with an area of approximately 74.32 m<sup>2</sup> (800 sq.ft.) in size; and,
- maintaining the existing three bachelor dwellings units consisting of one on the second floor above the proposed restaurant and two in the rear of the building.

## APPLICANT

John Cvetkovic, owner.

## LOT SIZE AND AREA

The subject property is irregular in shape and has a total of approximately:

- 9.29 m (30.5 ft.) of lot frontage on Cannon Street;
- 35.66 m (117 ft.) of lot depth; and
- 331.52 m<sup>2</sup> (3568.65 sq.ft.) of lot area.

## LAND USE AND ZONING

	<u>EXISTING LAND USE</u>	<u>EXISTING ZONING</u>
<u>Subject Lands</u>	Residential-three dwelling units	"L-c" (Planned Development-Commercial) District
<u>Surrounding Lands</u>		
to the north	Italo Canadian Recreation Club	"H" (Community Shopping and Commercial, etc.) District
to the south	Parking lot	"L-c" (Planned Development-Commercial) District

to the east	Parking lot	"L-c" (Planned Development-Commercial) District
to the west	Residential-multiple dwellings	"L-c" (Planned Development-Commercial) District

#### OFFICIAL PLAN

Designated "Central Policy Area", the proposal complies.

#### NEIGHBOURHOOD PLAN

Designated "Commercial and Apartments" on the approved Central Neighbourhood Plan. The proposal complies with the intent of the Neighbourhood Plan.

#### RESULT OF CIRCULARIZATION

The following agencies have no comments or objections:

- Hamilton Region Conservation Authority;
- Go Transit;
- Traffic Department; and,
- LACAC.

- The Building Department has advised as follows:

"The proposed three dwellings and restaurant does not conform to:

1. Section 14(i)(iiia), 180 m<sup>2</sup> lot area per dwelling unit and dwelling unit floor area exceeds commercial floor area.
2. Section 14(4)(ii), one or two dwelling units with commercial having lot width of 12.0 m and lot area 360.0 m<sup>2</sup>.
3. Parking requirement is 4 spaces; (possibly may provide 3 spaces).

The proposal of increasing from two dwelling units to three dwelling units maybe possible under Section 14(1a), (1b) and (1c), provided that the average floor area of all three dwelling units shall be 65.0 m<sup>2</sup> or more".

- The Hamilton-Wentworth Department of Engineering has advised that:

"Public watermains and combined storm and sanitary sewers are available to service the subject lands.

From a safety point of view, vehicular access to the rear of the structure, where parking would likely be provided, is marginal due to the inadequate sight distances on Cannon Street.

Since the building encroaches onto the widened Cannon Street West road allowance, an encroachment agreement is required with the Region".

#### COMMENTS

1. The proposal complies with the Official Plan.

2. The proposal complies with the approved Central Neighbourhood Plan.
3. The proposal has merit and can be supported for the following reasons:
  - it is compatible with existing and future development contemplated in this area;
  - it is confined to the existing building; and,
  - it will create a mixed commercial and residential use which is desirable in the downtown core.
4. Sections 14(1a), (1b) and (1c) of Zoning By-law 6593 permit the conversion of a building, or part thereof, within the "H" District for up to 10 dwelling units provided that the following are satisfied:
  - i) the building existed on March 8, 1983;
  - ii) the average floor area of all dwelling units must be at least 65.0 m<sup>2</sup>; and,
  - iii) The subject property must be separated at least 180 m away from any other property with a converted building in accordance with Section 14(1a) of Zoning By-law 6593.

The proposal meets the requirement of i); ii); and iii) above. In particular, the applicant has verbally advised that the units above the restaurant and the two at the rear of the building satisfy the average floor area requirement of 65.0 m<sup>2</sup>.

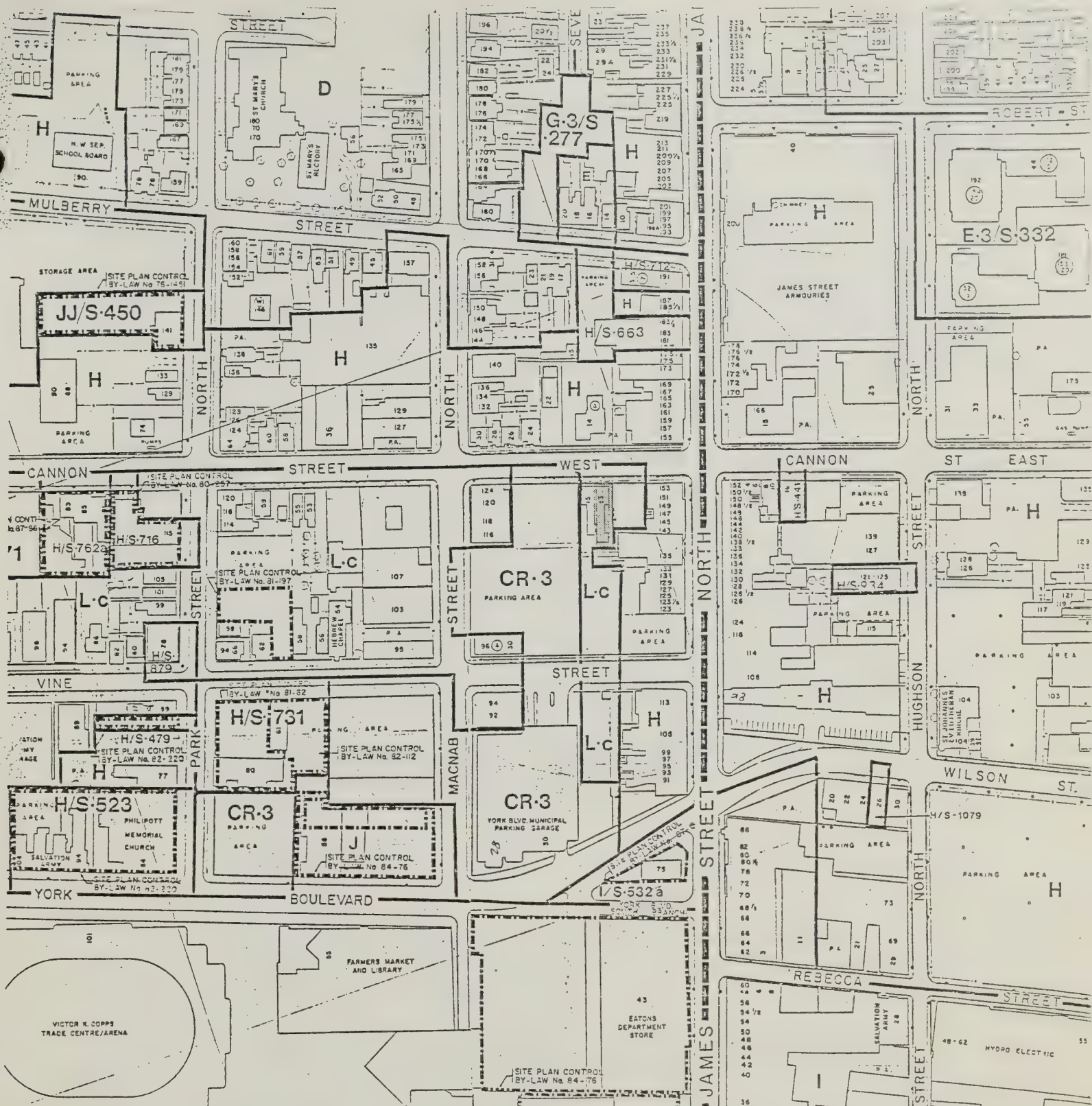
5. Section 14(1a) of Zoning By-law 6593 exempts the residential dwelling from providing any parking space. However, the applicant has verbally agreed to provide on-site parking. Based on a site inspection and discussions with both Building Department and Traffic Department, there is sufficient area at the rear and east portion of the subject lands to provide three parking spaces.
6. It should be noted that the restaurant portion of the proposal is not required to provide any parking since the subject lands are located in Area A on Schedule "I" to By-law No. 6593.
7. The Hamilton-Wentworth Engineering Department has advised that the applicant must enter into an encroachment agreement with the Region since the existing building encroaches onto the widened road allowance on Cannon Street West. In addition, the Department has also advised that if the existing buildings is demolished in the future, the Region may need to acquire the designated 3.048 m (10 ft.) for road widening purposes.

#### CONCLUSION

On the basis of the foregoing the application can be supported.

HY/ma  
WP0217P





Legend



Site of the Application

ZA 89-03

APPENDIX





FOR ACTION

16.

REPORT TO: SUSAN REEDER, SECRETARY  
PLANNING AND DEVELOPMENT COMMITTEE

FROM: J. D. THOMS, COMMISSIONER  
PLANNING AND DEVELOPMENT DEPARTMENT

DATE: 1988 March 22  
COMM FILE:  
DEPT. FILE: ZA-89-01  
Ryckmans  
Neighbourhood

SUBJECT:

An amended application requesting a change in zoning - rear of No. 1565 Upper James Street.

RECOMMENDATION

That approval be given to Amended Zoning Application 89-01, 673833 Ontario Limited (F. Tchamitchi) owner, requesting changes in zoning from the "AA" (Agricultural) District to the "C" (Urban Protected Residential, etc.) District (Block "1") and "HH" (Restricted Community Shopping and Commercial, etc.) District (Block "2"), and from the "AA" (Agricultural) District, modified to the "HH" (Restricted Community Shopping and Commercial, etc.) District (Block "3") to permit development for single-family detached dwellings on lands shown as Block "1" and commercial development for lands shown as Blocks "2" and "3", located at the rear of 1565 Upper James Street, as shown on the attached map marked as APPENDIX "A", on the following basis:

- i) That the lands shown as Block "1" be rezoned from "AA" (Agricultural) District to "C" (Urban Protected Residential, etc.) District;
- ii) That the lands shown as Block "2" be rezoned from "AA" (Agricultural) District to "HH" (Restricted Community Shopping and Commercial, etc.) District;
- iii) That the lands shown as Block "3" be rezoned from "AA" (Agricultural) District, modified to "HH" (Restricted Community Shopping and Commercial, etc.) District;
- iv) That the "HH" (Restricted Community Shopping and Commercial, etc.) District regulations as contained in Section 14A of Zoning By-law No. 6593, applicable to the subject lands shown as Blocks "2" and "3", be modified to include the following variances as special requirements:
  - a) That notwithstanding Section 18A(12)(c), a visual barrier not less than 1.8 m and not greater than 2.0 m in height contained within a 9.1 m wide landscaped strip shall be provided and maintained along the easterly lot line of the commercial zoning district; and,

- b) That no access shall be permitted on the easterly lot line of the commercial zoning district.
- v) That the amending By-law be added to Section 19B of Zoning By-law No. 6593 as Schedule S- , and that the subject lands on Zoning District Map E-9D be notated S- ;
- vi) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593 and Zoning District Map E-9D;
- vii) That the proposed change in zoning is in conformity with the Official Plan for the Hamilton Planning Area; and,
- viii) That the approved Ryckmans Neighbourhood Plan be amended by redesignating the easterly portion of Block "2" from "ATTACHED HOUSING" to "COMMERCIAL".

#### EXPLANATORY NOTE

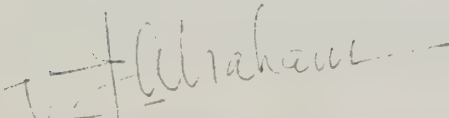
The purpose of this By-law is to provide for changes in zoning for lands located at the rear of 1565 Upper James Street, as shown on the attached map marked as APPENDIX "A", on the following basis:

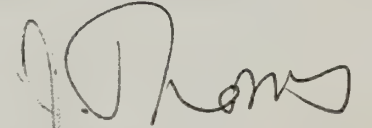
- Block "1" - From "AA" (Agricultural) District to "C" (Urban Protected Residential, etc.) District;
- Block "2" - From "AA" (Agricultural) District to "HH" (Restricted Community Shopping and Commercial, etc.) District; and,
- Block "3" - From "AA" (Agricultural) District, modified to "HH" (Restricted Community Shopping and Commercial, etc.) District.

The effect of the By-law is to permit development for single-family detached dwellings on Block "1", and retail-commercial development on Blocks "2" and "3".

In addition, the By-law provides for the following additional regulations:

- i) to require a visual barrier not less than 1.8 m and not greater than 2.0 m in height contained in a 9.1 m wide landscaped strip to be provided and maintained along the easterly lot line of the commercial development, whereas no landscaped provisions are required; and,
- ii) to prohibit access on the easterly side of the commercial development.

  
V. J. Abraham, M.C.I.P.  
Director of Local Planning

  
J. D. Thoms, M.C.I.P.  
Commissioner  
Planning and Development Department

## FINANCIAL IMPLICATIONS

N/A

## BACKGROUND

### o Proposed Development

It is the applicant's intention to develop Block "1" for single family dwelling lots, and Blocks "2" and "3" as a retail-commercial development in conjunction with 1565 Upper James Street.

## APPLICANT

673833 Ontario Limited (Farshad Tcharmtchi) owner.

## LOT SIZE AND AREA

The subject property is an irregularly shaped lot having approximately 1.668 ha (4.122 ac) of lot area.

## LAND USE AND ZONING

	<u>EXISTING LAND USE</u>	<u>EXISTING ZONING</u>
<u>SUBJECT LANDS</u>	Parking lot, single-family dwelling and vacant land	"AA" (Agricultural) District, and "AA" (Agricultural) District, modified
<u>SURROUNDING LANDS</u>		
to the north	Parking lot and vacant land	"G" (Neighbourhood Shopping Centre, etc.) District, modified and "C" (Urban Protected Residential, etc.) District (subject to final By-law approval)
to the south	automobile sales and service centres, pool supplies, welding service and Real Estate office complex	"HH" (Restricted Community Shopping and Commercial, etc.) District, modified, "C" (Urban Protected Residential, etc.) District and "AA" (Agricultural) District
to the east	vacant	"A" (Conservation, Open Space, Parks and Recreation) District and "C" (Urban Protected Residential, etc.) District
to the west	small commercial plaza	"HH" (Restricted Community Shopping and Commercial, etc.) District and "AA" (Agricultural) District, modified



## OFFICIAL PLAN

Block "1" is designated "RESIDENTIAL" on Schedule "A" - Land Use Concept of the Official Plan. The following policy, among others, applies:

- o "A.2.1.1        The primary uses permitted in the areas designated on Schedule "A" as RESIDENTIAL will be for dwellings. Various types of dwellings are included within this designation, while preference will be given to the locating of similar densities of development together."

Based on the above, the proposed residential use complies with the intent of the Plan.

Blocks "2" and "3" are designated "COMMERCIAL" on Schedule "A" - Land Use Concept Plan of the Official Plan. The following policy, among others, applies:

- "A.2.2.1        The primary uses permitted in the areas exceeding .4 hectare designated on Schedule "A" as COMMERCIAL will be for Commerce. In this regard, Commerce is defined as establishments involved in the buying and selling of goods and services; business offices; and hotels, convention and entertainment facilities".

The subject lands are also located within "SPECIAL POLICY AREA 31", (which includes 31a, 31b and 31c) on Schedule "B". The following policy applies:

- "2.9.3.26        In keeping with the provisions of Subsection 2.2 - Commercial Uses, for those lands shown on Schedule "B" as SPECIAL POLICY AREA 31, (which includes 31a, 31b and 31c) and designated "COMMERCIAL" on Schedule "A" the following will apply:
  - i)        The Upper James Street frontage is recognized as a highway-oriented Commercial area which will include a diversity of retail and service uses catering not only to the travelling public, but to the daily needs of the adjacent neighbourhoods.
  - v)        To ensure a co-ordinated approach in the development of Special Policy Areas 31, 31a, 31b and 31c, and to enhance Upper James Street as a viable Commercial area; proponents of development or redevelopment will be encouraged to co-operate with adjacent property-owners regarding such matters as, access, parking, architectural quality and design, and landscaping."

Based on the above, the proposed commercial development on Blocks "2" and "3" complies with the intent of the Official Plan.

### NEIGHBOURHOOD PLAN

Block "1" is designated "SINGLE AND DOUBLE RESIDENTIAL" in the approved Ryckmans Neighbourhood Plan. The proposal complies.

The easterly portion of Block "2" is designated "ATTACHED HOUSING" in the approved Ryckmans Neighbourhood Plan. A redesignation to "COMMERCIAL" is required.

The remaining portion of Block "2", and Block "3", are designated "COMMERCIAL" in the approved Ryckmans Neighbourhood Plan. The proposal complies.

### UPPER JAMES STREET CORRIDOR URBAN DESIGN GUIDELINES

The subject lands are located within the area subject to the Urban Design Guidelines which include the following:

- i) a minimum lot depth of 97.5 m (325 ft.);
- ii) a minimum lot frontage of 30 m (100 ft.);
- iii) a minimum 3 m (10 ft.) wide landscape strip along the rear and front lot lines;
- iv) a maximum building height of 8 storeys; and,
- v) rear and front service roads 21 m (70 ft.) in width which would permit 2 rows of cars and a through lane for traffic.

Many of the features of the Urban Design Guidelines will be applied during the site plan approval process.

### COMMENTS RECEIVED

- o The following agencies have no comment or objections:

- LACAC; and,
- Hamilton Region Conservation Authority.

- o The Building Department has advised as follows:

"This zoning application also is changing the zoning of the building known as 1569 Upper James Street, which is located on the same lot.

This Department recognizes the two principal buildings consisting of a single family dwelling and a commercial use located on the same lot as a legal non-conforming condition. However, a two-family dwelling is not permitted".

- o The Traffic Department has advised as follows:

"Block 2, which is being proposed as commercial zoning, was designated as attached housing on the approved neighbourhood plan and would have served as a transitional area or buffer between the commercial development along Upper James Street and the single family dwellings in the middle of the neighbourhood. While we have no specific objection to the proposed rezoning, we do have a general concern with the continual encroachment of commercial zoning into neighbourhoods.

We recommend that no vehicular access be permitted from the north/south interval neighbourhood street to the proposed commercial development and that adequate landscaping and visual barrier be provided along the east boundary of the proposed commercial development."

- o The Engineering Department has advised as follows:

"Public watermains and separate storm and sanitary sewers are available to service the subject land. Servicing details will be dealt with through a subdivision agreement."

#### COMMENTS

1. The proposal complies with the intent of the Official Plan.
2. Approval of the application would necessitate an amendment to the approved Ryckmans Neighbourhood Plan to redesignate the easterly portion of Block "2" from "ATTACHED HOUSING" to "COMMERCIAL".
3. The proposal can be supported for the following reasons:
  - o it is compatible with existing and proposed development in the area;
  - o the commercial component of the development is located on a major arterial road and the residential portion is located within the interior of the neighbourhood; and,
  - o it would facilitate the development of an entire block for commercial purposes.
4. To ensure adequate screening and buffering for the proposed residential development to the east (Block "1"), it would be appropriate to require a visual barrier between 1.8 m and 2.0 m in height contained within a 9.1 m wide landscaped strip along the easterly lot line of the commercial zoning district. In addition, no access should be permitted on the easterly lot line of the commercial zoning district.

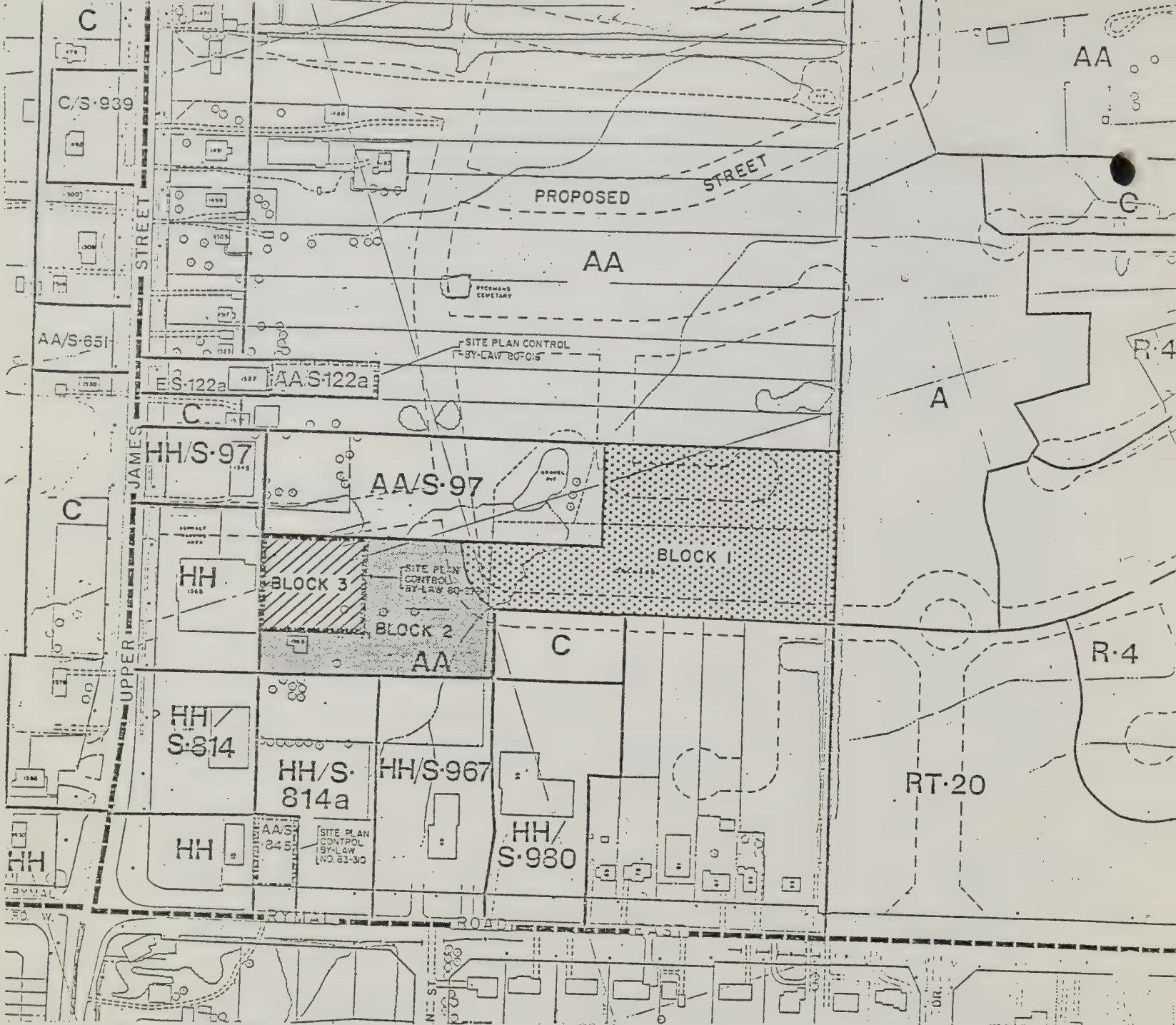
5. Under the "HH" (Restricted Community Shopping and Commercial, etc.) District provisions, the lands are subject to Site Plan Control By-law 79-275. Matters such as parking, landscaping, access, Urban Design Guidelines, etc., will be reviewed during the site plan approval process.

#### CONCLUSION

On the basis of the foregoing, the amended application can be supported.

MPS/ma/s  
WPU217P





# LEGEND

APPENDIX "A"

## PROPOSED CHANGE IN ZONING FROM:

BLOCK 1



"AA" (AGRICULTURAL) DISTRICT TO "C" (URBAN PROTECTED RESIDENTIAL, ETC.) DISTRICT.

BLOCK 2



"AA" (AGRICULTURAL) DISTRICT TO "HH" (RESTRICTED COMMUNITY SHOPPING AND COMMERCIAL) DISTRICT.

BLOCK 3



"AA" (AGRICULTURAL) DISTRICT, MODIFIED TO "HH" (RESTRICTED COMMUNITY SHOPPING AND COMMERCIAL) DISTRICT.



FOR ACTION

REPORT TO: SUSAN REEDER, ACTING SECRETARY  
PLANNING AND DEVELOPMENT COMMITTEE

FROM: J. D. THOMS, COMMISSIONER  
PLANNING AND DEVELOPMENT DEPARTMENT

DATE: 1989 March 21  
COMM FILE:  
DEPT. FILE: ZA-89-05  
DURAND NEIGHBOURHOOD

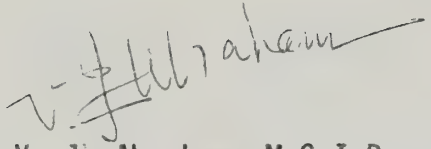
SUBJECT:


Request for a further modification in zoning - 10 Herkimer Street.

RECOMMENDATION

That Zoning Application 89-05, 583783 Ontario Inc. (D. and F. Steller), owners, requesting a further modification to the established "E-1" (Multiple Dwellings, Lodges, Clubs, etc.) District regulations to permit expansion of the existing residential care facility from 34 residents to 59 residents without providing ten additional parking spaces, for property located at No. 10 Herkimer Street, as shown on the attached map marked as APPENDIX "A", be DENIED for the following reasons:

- i) One of the prime goals of the Residential Care Facilities By-law is to provide residents of such facilities with an opportunity to live in an environment that closely approximates a family situation in a residential neighbourhood. The proposed increase in capacity to a maximum of 59 residents, or nearly three times that permitted, would result in the creation of an "Institutional" use. The proposal is contrary to the intent and philosophy behind the By-law and Provincial policies which were designed to encourage smaller facilities in residential neighbourhoods.
- ii) It represents an over-intensification of land use, in that adequate parking would not be provided.
- iii) Approval of the application would set an undesirable precedent for future similar applications.
- iv) The proposal would result in the demolition of a "listed" building which is of historical and architectural significance to LACAC.

  
V. J. Abraham, M.C.I.P.  
Director of Local Planning

  
J. D. Thoms, M.C.I.P.  
Commissioner  
Planning & Development Department

### FINANCIAL IMPLICATIONS

N/A.

### BACKGROUND

#### ● Proposal

The purpose of the application is to permit the expansion of the existing residential care facility from 34 residents to 59 residents without providing 10 required additional parking spaces. To accommodate the additional 25 residents, the applicants intend to demolish the original dwelling (No. 10 Herkimer Street) and construct a 4 storey addition to the recently constructed facility.

#### ● By-law 83-217

City Council at its meeting held on July 27, 1983 passed By-law 83-217 which provided for a modification to the "E-1" (Multiple Dwellings, Lodges, Clubs, etc.) District regulations on the subject lands. The effect of the By-law was to permit the construction of a 2 storey addition to the rear of the existing building, and use the property for a residential care facility for a maximum of 30 residents of at least 60 years of age. In addition, the by-law required the applicant to provide:

- 9 parking spaces on the site;
- a side yard along the easterly lot line having a width of 3.0 m (9.84 ft.);
- a side yard along the westerly lot line having a width of 6.0 m (19.7 ft.).
- a rear yard having a depth of 4.6 m (15.1 ft.).

#### ● Committee of Adjustment

On September 5, 1987, the Committee of Adjustment considered and approved minor variance application A-87-222 to permit an increase in the capacity of the existing residential care facility from 30 residents to a maximum of 34 residents, without providing the required 2 additional parking spaces. The Planning Department comments submitted in conjunction with the minor variance application recommended denial of the application on the basis that:



- the variance is not considered to be minor in nature.
- it is located within 600 feet of another residential care facility.
- approval of the application would set an undesirable precedent for future similar applications to increase the number of residents.

#### APPLICANTS

583783 Ontario Inc. (D. and F. Steller), owners.

#### LOT SIZE AND AREA

- 31.68 m (103.95 ft.) of lot frontage on Herkimer Street;
- 53.68 m (176.11 ft.) of lot depth; and,
- 1,700.58 m<sup>2</sup> (18,305.5 sq. ft.) of lot area.

#### LAND USE AND ZONING

	<u>Subject Land Use</u>	<u>Existing Zoning</u>
Subject Lands	Residential Care Facility for 34 residents	"E-1" (Multiple Dwellings, Lodges, Clubs, etc.) District, modified
<u>Surrounding Lands</u>		
to the north	Duplex, single-family dwellings and a Residential Care Facility	"E-1" (Multiple Dwellings, Lodges, Clubs, etc.) District
to the south	Apartments	"DE-3" (Multiple Dwellings District)
To the east	Mixed residential and commercial uses	"E-1" (Multiple Dwellings, Lodges, Clubs, etc.) District
To the west	Apartments	"E" (Multiple Dwellings, Lodges, Clubs, etc.) District



## OFFICIAL PLAN

Designated "Commercial" on Schedule "A" - Land Use Concept of the Official Plan. The following policy, among others, would apply:

"A.2.2.1 The primary uses permitted in the areas exceeding 0.4 hectare designated on Schedule "A" as COMMERCIAL will be for Commerce, defined as establishments involved in buying and selling of goods and services; business offices; and hotels, convention and entertainment facilities. In addition to the primary permitted uses, the following may be permitted within COMMERCIAL areas, provided that they have been designated in the Neighbourhood Plan:

(i) Residential uses subject to the following provisions:

- a) Access drive and parking will be screened and/or buffered such that noise, light or undesirable visual impacts emanating from neighbouring COMMERCIAL USES are mitigated;
- b) Any impacts emanating from adjacent COMMERCIAL USES which will detract from the amenity of the Residential Use will be minimized; ..."

The proposal would not conflict with the intent of the Official Plan.

## NEIGHBOURHOOD PLAN

Designated for "Commercial and Apartments" on the approved Durand Neighbourhood Plan, the proposal does not comply. Approval of the application would necessitate an amendment to the Durand Neighbourhood Plan to redesignate the subject lands from "Commercial and Apartments" to "Medium Density Apartments".

## COMMENTS RECEIVED

- The Building Department has advised that:

"The residential care facility will require 20 parking spaces. At present there are only 9.

Part 7 states that additional parking is available at 11 Charlton Avenue West, however, 11 Charlton Avenue West is a multiple dwelling and requires its own parking.

The maximum number of residents permitted for this zoning district is 20. By-law 83-217 permitted 30 residents."

- The Traffic Department has advised that:

"The application to permit the expansion is satisfactory subject to the provision of off-street parking in accordance with the Zoning By-Law for the existing facility plus the additional 25 residents."

- The Hamilton-Wentworth Department of Social Services has advised that:
  - "1. We do not have a subsidy contract with this second level lodging house and cannot comment on the care provided; we do know, however, that it has an excellent reputation in the community.
  2. If Mr. and Mrs. Stellar applied for a subsidy contract, our current policy - 24 bed maximum would exclude them.
  3. When their 34 bed facility was built, a zoning amendment was necessary. The Durand Neighbourhood Association had comments to make at that time, and we strongly suggest that they be asked for comments re this expansion plan."
- The Local Architectural Conservation Advisory Committee has advised as follows:

"Background: The proposed expansion of the Durand Seniors Residence at 10 Herkimer Street would entail the demolition of the "listed" house built in 1923 for Thomas C. Crerar, a prominent Hamilton lawyer. In its place, a four storey front addition accomodating 27 beds would be built onto the present two-storey building housing 34 residents. An application to demolish another "listed" house (2 1/2 storey brick; 1907) at 11 Charlton Avenue West to provide additional space for parking could also be made.

Comments/Action: The Committee recommended that the Zoning Application be denied in order to preserve the two "Listed" houses. Staff were requested to research the history of zoning changes for the property and the response of the Durand Neighbourhood Association to the original proposal to build a 30-bed seniors residence on the site (see copy attached - APPENDIX "B").
- The Hamilton-Wentworth Engineering Department has advised that:

"...Public watermains as well as sanitary and storm sewers are available to service the subject lands.

We do not anticipate any further road widenings at this time."
- The Hamilton Region Conservation Authority has no comments or objections.

#### COMMENTS

1. The proposal complies with the intent of the Official Plan.
2. The proposal conflicts with the intent of the approved Durand Neighbourhood Plan which designates the site for "Commercial and Apartments". Approval of the application would require an amendment to redesignate the site from "Commercial and Apartments" to "Medium Density Apartments".

3. The Building Department has advised that approval of the application would require the following By-law variances:

<u>Variance</u>	<u>Required</u>	<u>Proposed</u>
Easterly side yard (Section 11(3)(ii)(b))	6.95 m	3.0 m
Off-street parking (Section 18A - TABLE 1-1.(1))	20 spaces	10 spaces

4. The proposal to permit a further expansion of the established residential care facility from 34 residents to 59 residents cannot be supported for the following reasons:

- By-law No. 81-27 respecting the regulations of residential care facilities and short-term care facilities was passed by City Council on January 13, 1981. The effect of the By-law was to permit such facilities in a broad range of residential and commercial districts, with specific resident capacity limits and separation distances.

The subject lands are zoned "E-1" (Multiple Dwellings, Lodges, Clubs, etc.) District. As set out under the "E-1" District provisions, a residential care facility with a maximum capacity of 20 residents is permitted, provided that it is situated on a lot having a minimum radial separation distance of 180.0 m (600 feet) to any other lot occupied or as may be occupied, by a residential care facility or short term care facility.

As noted in the background section of this report, previous rezoning and Committee of Adjustment applications were approved to permit a maximum of 34 residents, notwithstanding that this facility is within 180.0 m (600 feet) of two other established facilities (i.e. 52-56 Charlton Avenue West (Big Sister Association), and 15 Charlton Avenue West (Wayside House of Hamilton)).

One of the prime goals of the residential care facility by-law is to provide the residents of such facilities with an opportunity to live in an environment that closely approximates a family situation in a residential neighbourhood. The proposed increase in capacity to a maximum of 59 residents, or nearly three times that permitted, would result in the creation of an "Institutional" use. The proposal represents a significant departure from the provisions of the Residential Care Facilities By-law and is contrary to the Provincial policies which were designed to encourage smaller facilities in residential neighbourhoods.

- It represents an over-intensification of land use, in that adequate parking would not be provided.

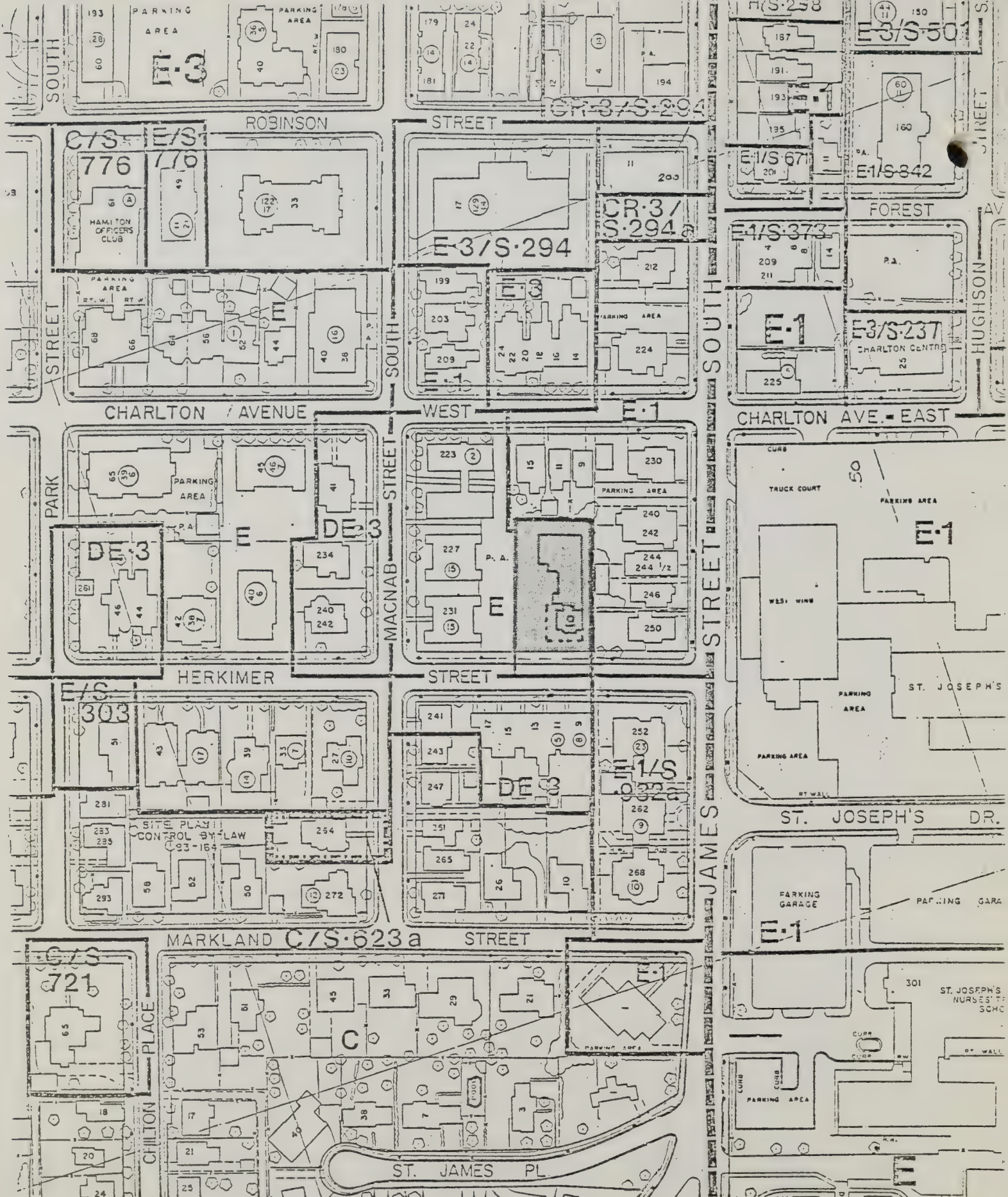
- Approval of the application would set an undesirable precedent for future similar applications.
- The proposal would result in the demolition of a "listed" building which is of historic and architectural significance to LACAC.

#### CONCLUSION

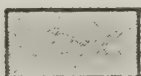
Taking into consideration that the capacity of this facility has already been increased beyond that permitted in an "E-1" District, and that the proposed further increase in capacity to 59 residents represents a considerable departure from the basic philosophy behind the requirements contained in the Zoning By-law, the proposal cannot be supported.

GAW:nd  
WP0019P

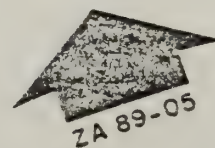




# LEGEND



SITE OF THE APPLICATION



ZA 89-05

APPENDIX A

Durand Seniors Residence

10 Herkimer Street

Background on Zoning and Site Plan Applications for  
Seniors Residential Care Facility

- May 1983 The Planning Department recommended that approval be given to Zoning Application 83-29 for a modification to "E-1" District regulations for the property at 10 Herkimer Street to permit a Residential Care Facility with a capacity of 30 senior citizen residents.
- LACAC endorsed the retention of the "listed" building at 10 Herkimer Street and notified the Planning Department that it was prepared to offer comments on the proposal when elevations were available.
- July By-law 83-217 was approved by Council.  
By-law required the provision of 9 off-street parking spaces.
- November By-law 83-217 was approved by the Ontario Municipal Board. (An OMB hearing was held because two objections to the by-law were received.)
- January 1984 Site Plan Control Application DA-83-58 for a 30-bed retirement home in the form of an addition to the existing house at 10 Herkimer Street was approved by the Planning and Development Committee.
- September 1987 Committee of Adjustment approved an additional 4 residents.
- January 1989 Zoning Application 89-05 for a further modification to the "E-1" District for property at 10 Herkimer Street to increase the number of residents from 34 to 59 by demolishing the existing original house and building a four-storey addition to the front of the two-storey building.



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170.





17b.

JOHN GRANT & JOHN WHITE  
250 JAMES STREET SOUTH  
HAMILTON, ONTARIO

March 14, 1989

ZA 89-05

MAR 15 1989

The Secretary, Planning and Development Committee  
City Hall  
71 Main Street West  
Hamilton, Ontario  
L8N 3T4

We strongly object to the demolition of the original dwelling of No. 10 Herkimer. To us, said demolition represents further evidence of the gradual erosion of an area of Hamilton that is considered one of the most interesting in the city, both historically and architecturally.

It is our understanding that when approval was granted for the original construction of the Durand Senior Citizen Residence that adjoins No. 10 Herkimer, it was based upon the understanding that the original home would **NOT** be torn down. It is also our understanding that any further additions to the Senior Citizens Residence would not in any way conflict with the outside of the original building, but would if necessary, be made to the interior, also extending the Charlton Avenue end of the present building.

Even though No. 10 Herkimer might not be considered a Heritage Home, it is still a charming and well known landmark that has rightfully earned its' place on the streetscape of Herkimer Street. This home was built for a young bride in the early 1920's and remained her loved and cherished home right up until the early 1980's when she was forced to sell due to health and age.

The owners of 252, 262 and 268 James Street South had the foresight and consideration that even though they completely remodelled and modernized the interiors of said buildings, the exteriors, after considerable work and expense, still retain their original appearance and interest.

We, John White and John Grant, own 250 James Street South and we have spent a considerable sum of money, and are still spending, to retain the original appearance of this fine home. 250 James Street South has been claimed a Heritage Home and has been written up in several articles.

A prime example of the erosion in this area is perhaps two of the ugliest buildings on all of James Street South, the new west wing of St. Josephs Hospital and the accompanying parking ramp at the corner of St. Josephs Drive and James Street South.

If No. 10 Herkimer is torn down and a new four storey building erected, then we will be looking at yet another step towards the gradual demise of the significance of this area.

Yours truly,

JOHN WHITE & JOHN GRANT

*John White*  
*John Grant*



201-45 Charlton Ave. W.,  
Hamilton, Ont.  
L8P 2C2

March 15, 1989.

Secretary,  
Planning and Development Committee,  
City of Hamilton,  
City Hall,  
Hamilton, Ontario.  
L8N 3T4

17c.

Dear Sir/Madam;

I am responding to your public notice concerning file ZA-89-05 - the proposed by-law amendment for 10 Herkimer Street. I am opposed to the passing of this amendment and my reasons are outlined below.

First, the property in question is virtually at the corner of Herkimer and James Streets - both of which accommodate very high levels of vehicular traffic. I believe that this poses a danger to pedestrian traffic - particularly to the elderly and the disabled elderly. This problem is particularly compounded by the fact that the property does not contain sufficient yards (either side or rear) to establish walking paths and areas for outdoor enjoyment for the residents. Consequently, the residents must use Herkimer Street and James Street for any sort of pedestrian movement. As well, the surrounding streets in the neighbourhood, particularly Charlton, Bay, and Aberdeen also accommodate high levels of traffic which means the residents have to continually deal with vehicular traffic. I am sure the existing street pattern and usage is not particularly enjoyable for the existing residents; to increase the number of residents by 25 (or almost seventy-five percent) is questionable. We must consider the impact of the built form on the lives of the residents and I believe that the streets serving this property cannot provide for the recreational aspects of the lives of the residents.

Second, independent of the decision to allow the increase in the number of residents, I believe the proposed demolition of the original dwelling should be rejected outright. The dwelling is part of the built form and architecture of Durand neighbourhood and is an integral part of the visually appeal and historical fabric of the neighbourhood. It is quite possible that the existing dwelling could be fully integrated with the proposed redevelopment. It is certainly a laudable goal to preserve the resources of our built form and developers should be encouraged to incorporate the existing form into their proposals. The City of Hamilton is responsible for the continued preservation of Hamilton's urban resources and I encourage you to ensure that this dwelling, 10 Herkimer Street, is preserved and maintained.

Sincerely yours,

*M. L. Tanner*

Mary Lou Tanner.





JOHN P. VAN RYN, D.P.M.

PODIATRIST - FOOT SPECIALIST

SUITE 201  
370 MAIN STREET EAST  
HAMILTON, ONTARIO  
L8N 1J6  
TEL. 522-8908

March 16, 1989

MAR 21

17d

Ms. Susan Reder  
Secretary, Planning Committee  
City Hall  
Hamilton, Ontario

Re: Durrand Sr. Residence (Mrs. D. Steller)  
Expansion plans for 10 Herkimer St., Hamilton.

I have known Mrs Steller for the past five years in my capacity  
as a Podiatrist visiting her Seniors Residence.

I have found her to be a very competent operator and feel she  
should be allowed to expand her operation as there are very few  
facilities of this caliber available to seniors in the Hamilton area,  
at the nominal rates charged by Mrs. Steller.

Sincerely,



John P. Van Ryn, D.P.M.





# DURAND SR. RESIDENCE

RETIREMENT HOME

10 HERKIMER ST., HAMILTON, ONT. L8P 2G2

PHONE: 525-0338

17e.

March 3. 1989.

To Whom It May Concern

Regarding the expansion of the Durand Sr. Residence

After successfully operating a second level lodging home for eight years we find we are forced to expand, to enable us to maintain our standard of care at a reasonable fee, and to continue to make our home accessible to the majority of the seniors on fixed incomes.

The infrastructure is there and expansion is the practical solution. We have a waiting list of approximately one year, made up mainly of seniors from our Durand neighbourhood. These seniors would be forced to move outside the area to find comparable accommodations at much higher rents.

In our experience, up to 59 residents does not have to be an institution. On the contrary, the increase in revenue could provide better individual care and extracullicular activities. The By-law on Density should be applied to a strictly residential neighbourhood. Our location is most ideal for our type of care. We are situated 40 metres from a major hospital and a main thoroughfare (James Street South) of our city. We are also in close proximity to parks and shopping areas. This is the most logical location for our expansion.

Our residents do not tax the area, as none of our seniors own cars and many rarely leave the residence. Visitors are few and our parking lot is never full. Twenty seven additional seniors would have no negative impact on our neighbourhood. Our private residence would have to be demolished, and every effort will be made replacing the building with a structure which will complement the streetscape and will be an asset to our surrounding historical buildings. It is our wish to see our seniors live in harmony with their surroundings.

Yours truly -

Mrs. Doreen Steller

Mr. Fritz Steller

*Fritz Steller*





PLACEMENT COORDINATION SERVICE  
of Hamilton-Wentworth

414 Victoria Avenue North, Hamilton L8L 5G8 (416) 528-1512



27 February 1989

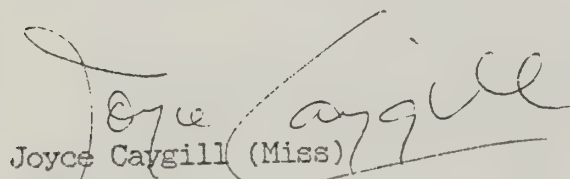
TO WHOM IT MAY CONCERN

It has come to my attention that the owners of the Durand Seniors Residence wish to expand the present building to accommodate a larger number of residents.

We at PCS would be extremely pleased to see this accomplished because Mrs. Stellar has maintained the highest standards at very reasonable rates. She always has a long list of persons seeking admission although there are many other retirement homes in the Region with vacant beds. Also, the location of the residence is such that it affords the seniors a sense of community, of being in the type of surroundings to which they have been accustomed all their lives.

In short, they are "at home" not in an institution.

I would be pleased to provide statistics to support the Durand Seniors Residence application if necessary.

  
Joyce Caygill (Miss)  
Director

jc130



Ontario

funded by the  
Ontario Ministry of Health

administered by the  
Victorian Order of Nurses  
Hamilton-Wentworth Branch



SENIORS ACTIVATION MAINTENANCE PROGRAM of Hamilton Inc.  
191 MAIN ST.W. Suite 300  
Hamilton Ont. L8P 4S2

March 7/89

TO WHOM IT MAY CONCERN:

I have known Mrs Doreen Stella since August 1981. At this time she had just opened her residence at 24 Victoria.

We have worked closely over the past years. Doreen has always been very conscientious and concerned about the total well-being of her residents.

Several of the residents from Durand have actively participated in the SAM Program. They always speak very highly of Mrs Stellar and her staff. This in turn is an excellent indicator of the care and concern given to the residents.

It is to be hoped that Mrs Stellar will be encouraged to continue in this business over the next few years as she provides an essential service to this community.

Yours truly

A handwritten signature in cursive script, appearing to read "Lynne Edwards", with a stylized flourish at the end.

Lynne Edwards  
Director



62 Enmore Drive  
Ancaster, Ont.

March 6/89

172

Corporation City of Hamilton  
Planning Dept.  
City Hall, Hamilton, Ont.

Attn. Ms. Susan Reeder

Dear Ms Reeder:

I am writing to support the application for zoning change being requested by Doreen Steller with regard to changes at the Durand Seniors Residence at 10 Herkimer Street.

I am acquainted with the existing premises and the need for expansion in as much as my elderly mother has been resident for nearly four years and I visit the establishment several times a week. Let me assure you that if there any need for confirmation, I can attest to the high quality of service and care being offered at the Durand. If expansion will further this excellent work, I enthusiastically endorse it.

Yours very truly,

Donald R. Walker







The Canadian Red Cross Society  
La Société canadienne de la Croix-Rouge  
400 King Street East  
Hamilton, Ontario  
Canada L8N 1C3  
Telephone (416) 522-8485  
Hamilton Branch

179.

March 23, 1989

MAR 23 1989

Ms. Susan Reeder,  
Secretary,  
Planning Committee,  
City Hall,  
71 Main Street West,  
Hamilton, Ontario.  
L8P 1H4

Dear Ms. Reeder:

We would like to express our support for the expansion of the Durand Senior Residence Retirement Home at 10 Herkimer Street in Hamilton.

Our association with the Durand Home began over nine years ago when it was first located near us at 24 Victoria Avenue South. As neighbours, we had a good relationship with the owner and operator, Mrs. Steller, and we were often able to help the residents, through our transportation programme and other services for seniors.

We have always felt that the Durand Home was well-managed and that Mrs. Steller cared about the unique needs of each resident and responded to them to her fullest extent.

Furthermore, since housing for seniors in our community is critical and since resources for new, affordable developments are strapped, we feel that the Durand Home's request for expansion should be seriously and favourably considered.

Yours very truly,

*Patricia Hutchison*

Patricia Hutchison (Mrs.),  
Area Director.

cc: Mrs. Doreen Steller

PH:dmp





URBAN MUNICIPAL

APR 4 1989

E. A. SIMPSON  
CITY CLERK

GOVERNMENT DOCUMENTS

K. E. AVERY  
DEPUTY CITY CLERK



Urban Municipal Librarian/  
Central Library

CITY HALL  
HAMILTON, ONTARIO  
L8N 3T4

**THE CORPORATION OF THE CITY OF HAMILTON**

OFFICE OF THE CITY CLERK

1989 March 31

Mr. E. W. Kowalski, Director of Community Development  
Mr. S. Ghanem, Director of Economic Development  
Mr. G. S. Spencer, Engineering Commissioner  
Attention: Mr. K. Brenner  
Mr. M. Main, Director of Traffic Services  
Mr. R. Karl, Traffic Department  
Ms. Diana Pasko, Planning Department  
Mr. E.G. Beres, Regional Assessment Commissioner  
Urban Municipal Librarian, Central Library

Attached herewith are the minutes of the Planning and Development Committee meeting held Wednesday, 1989 March 15.

These minutes were approved by the Committee at its meeting held Wednesday, 1989 March 29.

Yours very truly,

Mrs. Susan K. Reeder, Secretary  
Planning and Development Committee

SKR:dbm

Attch's.

- c.c.'s. - Manager, C.M.H.C.  
- Hamilton & District Chamber of Commerce  
Attention: Kathy Drewitt  
- Mr. V. Mauceri, Manager, Research Dept., H.S.R.  
- Mr. Paul E. Shewfelt, Board of Education  
- Mr. T. Cupido, Superintendent of Plant,  
Hamilton Separate School Board  
- Mr. M. D. Crowley, Southam Communications Ltd.  
- Mr. D. Miller, Canada Life, London, Ontario  
- Mr. P. Hill, Durand Neighbourhood, c/o Ruth Morrison







Wednesday, 1989 March 15  
1:00 o'clock p.m.  
Room 233, City Hall

1.

The Planning and Development Committee met.

There were present: Alderman J. Smith, Chairman  
Alderman D. Christopherson  
Alderman W. McCulloch  
Alderman M. Kiss  
Alderman B. Hinkley  
Alderman H. Merling  
Alderman D. Ross

Regrets: Mayor Robert M. Morrow  
Alderman F. Lombardo, Vice-Chairman

Also present: Alderman V. Ago  
Alderman T. Murray  
Mr. L. Sage, Chief Administrative Officer  
Mr. E. Matthews, City Treasurer  
Mr. J. Thoms, Commissioner of Planning and Development  
Mr. V. Abraham, Director of Local Planning  
Mr. B. Allick, Building Department  
Mr. K. Brenner, Regional Engineering Department  
Mr. L. King, Building Department  
Mr. J. Robinson, Community Development Department  
Mr. M. Watson, Real Estate Division  
Ms. J. McNeilly, Community Development Department  
Mr. K. Beattie, Treasury Department  
Mr. J. Roy, M.B.A. Student, Treasury Department  
Mr. G. Robis, Building Department  
Mr. B. Pooler, Building Department  
Mr. E. Kowalski, Director of Community Development  
Mr. B. McCammon, Regional Planning Department  
Mr. R. Karl, Traffic Department  
Mr. J. Sakala, Planning Department  
Mr. D. Godley, Planning Department  
Mr. M. Sabelli, Planning Department  
Mr. B. Janssen, General Manager, Municipal Non-Profit  
(Hamilton) Housing Corporation  
Ms. N. Chapple, Planning Department  
Mr. J. Schwarz, Regional Planning Department  
Mr. P. Mallard, Planning Department  
Ms. J. Hickey, Planning Department  
Mrs. Susan K. Reeder, Secretary

The Committee was in receipt of a memorandum from the City Treasurer dated 1989 March 10 respecting the 1989 Current Budget. The Committee was also in receipt of a memorandum from the City Treasurer dated 1989 March 10 respecting the 1989 Current Budget's Estimates and Ranked Packages.

1989 Current  
Budget.

The City Treasurer addressed the Committee on this matter and outlined the process he recommends for review by Standing Committees in an effort to reduce the Budget's Estimates. The Committee then discussed this matter in great detail.

The Committee then APPROVED the following:

That the following packages BE DELETED from the 1989 Budget Estimates:

- (a) Planning and Development - Technical/Cartographic Services - Background Studies.
- (b) Building - Two Inspectors, Stenographer III (Licence Applications).
- (c) Planning and Development - Staff Training.
- (d) Planning and Development - Technical/Cartographic Services - Plan Applications.

Minutes -  
1989 March 1.

The Committee was in receipt of the minutes of their meeting held Wednesday, 1989 March 1 and APPROVED these minutes.

Demolition Permit  
Application

The Committee was in receipt of a report from the Building Commissioner dated 1989 March 8 respecting a Demolition Permit Application and APPROVED the following:

That the Building Commissioner BE AUTHORIZED to issue a demolition permit for the following property:

(a) 82 Colbourne Street.

Alderman  
Christopherson -  
budget decision  
re: licence  
applications.

At this point Alderman Christopherson spoke to the Committee following a brief absence from the room, on the decision of the Committee respecting the Budget Estimate Packages.

He expressed concerns at the actions of the Committee in deleting the positions within the Building Department respecting Licence Applications. He cautioned that deleting the staff would mean that inspections could not be carried out and he asked that the Legislation Committee be requested to amend the By-law to take out the responsibility of the City carrying out these inspections.

The Committee took NO ACTION on this matter.

Review of the  
functions of the  
Building  
Department.

The Committee discussed a matter of Reviewing the Functions of the Building Department which had been generally discussed during Budget deliberations.

The Chief Administrative Officer spoke briefly to this item and indicated some of the areas that he sees changes being made.

Following discussion on this matter by the Committee it was APPROVED:

That the Chief Administrative Officer report back to the Planning and Development Committee on the process to be used in Reviewing a Possible Restructuring of the City's Building Department.

Improvements to  
Carter Park.

The Committee RECEIVED a Delegation from the Corktown/Stinson Neighbourhood Association with respect to Improvements to Carter Park.

Alderman Agro addressed the Committee on this matter as well as Alderman McCulloch as the Ward representatives. Ms. McNeilly, spoke from the Planning and Development Department on the plans proposed by F. Basciano, Landscape Architect. Mr. Hal Costie, spokesperson for the Delegation addressed the Committee.

Following some discussion on this matter by the Committee the following was APPROVED and forwarded to the Parks and Recreation Committee for consideration:

- (a) That approval be given to implement the improvements at Carter Park recommended by the Corktown/Stinson Neighbourhood Association and outlined in an conceptual plan of the Priority One Park (Carter Park) prepared by F. Basciano, Landscape Architect; and
- (b) That additional funding required over and above the balance of O.N.I.P. Funds remaining be derived from the Park's Dedication Fund.

The Committee was in receipt of a report from the Director of Community Development dated 1989 March 7 respecting a Proposed Budget and Schedule of Payments for Jamesville Business Improvement Area.

Proposed Budget  
and Schedule of  
Payments -  
Jamesville B.I.A.

The Committee APPROVED the following:

- (a) That the 1989 Operating Budget of the Jamesville B.I.A. BE APPROVED in the amount of twenty-nine thousand, six hundred and twenty dollars (\$29,620.); and,
- (b) That the City Solicitor BE HEREBY AUTHORIZED and directed to prepare the requisite By-law pursuant to Section 217, The Municipal Act, R.S.O., 1980, to levy the 1989 Budget as reference in (a) above; and,
- (c) That the Schedule of Payments for 1989 be as follows:

\$15,000.	May
\$ 7,620.	August
\$ 7,000.	November

The Committee was in receipt of a report from the Director of Community Development dated 1989 March 3 respecting a New Member to the Board of Management (1989-1991) for the International Village B.I.A.

New member,  
Board of  
Management,  
International  
Village B.I.A.

The Committee APPROVED the following:

- (a) That By-law 87-229, amending By-law 86-212, appointing the International Village B.I.A. Board of Management BE AMENDED to add the following name:

Danny Phillips	Phillips Printing
	318 King Street East

- (b) That the City Solicitor BE AUTHORIZED and directed to amend By-law 87-229 pursuant to (a) above.

The Committee was in receipt of a report from the Director of Property dated 1989 March 1 respecting 393 Sherman Avenue North - Alpha Enclave (West).

393 Sherman  
Avenue North -  
Alpha Enclave  
(West)

The Committee APPROVED the following:

- (a) That the residential property located at 393 Sherman Avenue North in the Alpha Enclave (West) which was approved for acquisition by City Council on 1987 July 28, BE ACQUIRED THROUGH EXPROPRIATION; and
- (b) That the City Solicitor BE DIRECTED to take the appropriate action; and
- (c) That the City Clerk BE AUTHORIZED and directed to:
  - (i) Give Notice of the City's application as expropriating Authority, to all owners, registered owners and tenants (as defined in The Expropriations Act) of the above residential property in the Alpha Enclave (West) that is located within an industrial zone, for approval to expropriate in accordance with Section 34(8) of The Planning Act; and
  - (ii) Advertise the Notice of the City's Application in a newspaper as required by The Expropriations Act; and
  - (iii) Sign and receive the said Application for Approval to Expropriate.
- (d) All related costs to the acquisition and expropriation to BE CHARGED to Account CF 5590 308750001.



NOTE: City Council on 1988 November 8 in adopting Item #4 of the 22nd Report of the Planning and Development Committee, approved the expropriation of all the remaining residential properties required for the Alpha Enclave (West) project.

On 1988 November 16, a negotiated Option to Purchase document covering the purchase of 393 Sherman Avenue North was forwarded to City Council for approval. City Council on 1988 December 13 approved the purchase of same in adopting Item #4 of the First Report of the Planning and Development Committee. Due to title problems, the City Solicitor was unable to complete the purchase of 393 Sherman Avenue North as scheduled on 1988 February 8. The current owner is unable to give the City clear title.

In view of the above, the only method open to the City to acquire this property would be through expropriation.

Sheraton Hotel -  
Additional legal  
assistance.

The Committee was in receipt of a report from the Chief Administrative Officer dated 1989 March 10 respecting the Sheraton Hotel and the obtaining of additional legal assistance in the preparation of the documentation required for the Sheraton Hotel transfer. General discussion then ensued on the status of this matter and the following recommendation was APPROVED:

That the firm of Weir & Foulds BE RETAINED to assist Mr. D. Powers of the Legal Department in the completion of documentation necessary to finalize the transaction between Lakeview Development Limited and GGS Co. Limited as it pertains to the City of Hamilton's interest in the Sheraton Hotel.

NOTE: For the information of the members of City Council, the Planning and Development Committee at its meeting held Wednesday, 1989 March 15, directed the Chief Administrative Officer to provide a report to them on the current status of the Sheraton Hotel transfer of ownership. The Committee also requested that an investigation be undertaken on the possibility of Lakeview being required to pay back a portion of amounts they have earned over the years (Capital gains), as a partial result of up-front funds paid by the City to Lakeview at the inception of the Sheraton Hotel project for such consideration as parking.

When this report is presented to the Planning and Development Committee, all members of City Council will be invited to attend.

Settlement of  
Expropriation -  
14 Market Square

The Committee was in receipt of a report from the City Solicitor dated 1989 February 27 respecting Settlement of Expropriation of 14 Market Square.

The Committee APPROVED the following:

That the City pay the sum of \$40,000., plus interest plus legal costs, to settle the expropriation of 14 Market Square.

NOTE: This matter arises out of the City of Hamilton's expropriation of 14 Market Square in 1968. The City's legal consultant at Weir & Foulds has negotiated a settlement of the market value for this expropriation with the former owner's lawyer for (a) \$65,000., minus the \$25,000. paid when the expropriation plan was registered, (b) interest at the rate of 6% from 1968 December 31, (c) plus reasonable legal costs.

Heritage Permit  
alterations to  
252, 262 and 268  
James Street  
South.

The Committee was in receipt of a report from the Secretary of the Local Architectural Conservation Advisory Committee dated 1989 February 23 respecting Heritage Permit for alterations to 252, 262 and 268 James Street South.

The Director of Local Planning advised that it would be best to table this matter in order that this Building Application can be processed first.

The Committee then APPROVED the following:

That the Heritage Permit Application for property at 252, 262 and 268 James Street South BE TABLED in order that the Building Department can review the Building Permit Application for this same property first.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 March 7 respecting the Red Hill Expressway - Local Street Network, Red Hill Neighbourhood.

The Committee APPROVED the following:

That the Planning and Development Department BE AUTHORIZED to hold a joint Public Meeting with the Freeway Project Director to discuss the Red Hill Expressway - Local Street Network, Red Hill Neighbourhood.

The Committee was in receipt of a report from the Chairman of the Urban Design Committee dated 1989 March 7 respecting Re-confirmation of the Urban Design Committee.

The Committee APPROVED the following:

That the Urban Design Committee BE RE-CONFIRMED.

The Committee was in receipt of information respecting the St. Elizabeth Village East Site Plan Control Application DA-86-74.

Mr. K. Brenner of the Regional Engineering Department referred to a revised recommendation respecting this matter and the Secretary distributed this recommendation for the Committee's perusal.

Mr. T. Whelan, Solicitor for the St. Elizabeth Village spoke to the Committee and requested approval to him filing an undertaking on behalf of the Society under seal for completion of the agreement referred to in the recommendation of staff.

Some discussion ensued on this matter and Mr. P. Barkwell of the City Solicitor's Department commented on this.

The Committee then APPROVED the following:

- (a) That the St. Elizabeth Society BE REQUIRED to enter into an agreement, to be registered on title of the land, with the City of Hamilton for storm sewer channels located on the lands of St. Elizabeth Village and described as Part 1 of Plan 62R-9910 and Parts 1 to 18 inclusive of Plan 62R-9911. The easement agreement is to be prepared to the satisfaction of the City Solicitor and shall include the following:
  - (i) To acknowledge that the Parts described above are recognized as the floodplain;
  - (ii) To acknowledge that the owner of the land shall maintain the watercourse;
  - (iii) To acknowledge that the owner shall not construct or place any buildings or structures within the floodplain;
  - (iv) To acknowledge that any improvements by the owner or plantings and landscaping within the floodplain are at the owner's own risk; and,
  - (v) That the owner acknowledge that the drainage design by Parker Consultants, and subsequently constructed, will accommodate the increase in waterflow resulting from upstream development in Hamilton.

Red Hill Expressway - Local Street Network, Red Hill Neighbourhood.

Reconfirmation Urban Design Committee.

St. Elizabeth Village East Site Plan.

- (b) That a Corporate undertaking, under seal, from the St. Elizabeth Society to enter into the above-noted Agreement **BE ACCEPTED**.

**NOTE:** Acceptance of this undertaking will allow the Building Commissioner to issue Building Permits.

The Committee was in receipt of a recommendation from the Director of Community Development dated 1989 March 8 respecting a Provincial/Municipal Housing Agreement.

Alderman Ross spoke on his involvement with this issue to date and Mr. J. Robinson of the Community Development Department answered questions from the Committee.

Alderman Christopherson requested that when an Agreement is ready that a Public meeting be held before finalizing this matter. He also requested that a meeting of politicians of other cities be set up to share experiences with this programme.

Alderman Ross indicated that tentative steps were taken to set up such a politicians meetings and plans can be resurrected to do so.

Mr. J. Robinson of the Community Development Department indicated that when a meeting is set up on this agreement that portions of this should be held IN-CAMERA since specific sites would be mentioned.

The Committee then **APPROVED** the following:

That the Director of Community Development **BE HEREBY AUTHORIZED** to enter into negotiations with the Ministry of Housing, with the aim of establishing a Provincial/Municipal Housing Agreement.

**NOTE:** The contents of the proposed Agreement will be presented to the Planning and Development Committee and City Council prior to submission to the Province of Ontario.

Council Chambers. The Committee then adjourned to the Council Chambers to hear Zoning Applications.

Amended ZA 88-104 - south of Rymal Road East and east of the proposed extension of Upper Gage Avenue.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 March 8 respecting an Amended Zoning Application 88-104, for lands in the area south of Rymal Road East and east of the proposed extension of Upper Gage Avenue.

The Committee **APPROVED** the following:

That **APPROVAL** be given to amended Zoning Application 88-104, 779573 Ontario Inc. (Clemente Valeri), owner, for a change in zoning from "AA" (Agricultural) District to "R-4" (Small Lot Single-Family Detached) District (Block "1"), and from "C" (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District (Block "2"), for lands in the area south of Rymal Road East and east of the proposed extension of Upper Gage Avenue, as shown on the attached map marked as **APPENDIX "A"**, on the following basis:

- (a) That the lands described as Block "1" be rezoned from "AA" (Agricultural) District to "R-4" (Small Lot Single-Family detached) District;
- (b) That the lands described as Block "2" be rezoned from "C" (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District;
- (c) That the City Solicitor be directed to prepare a by-law to amend Zoning By-law No. 6593 and Zoning District Map E-49E for presentation to City Council;
- (d) That the proposed changes in zoning are in conformity with the Official Plan for the Hamilton Planning Area.



NOTE: The purpose of the by-law is to provide for the following changes in zoning of lands located in the area south of Rymal Road East and east of the proposed extension of Upper Gage Avenue.

- (a) Block "1": Change from "AA" (Agricultural) District to "R-4" (Small Lot Single-Family Detached) District.
- (b) Block "2": Change from "C" (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District.

The effect of the by-law is to permit development of the subject lands for small lot single-family detached dwellings in accordance with a draft plan of subdivision.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 March 2 respecting Revision to the Draft Approved Plan of Subdivision "Lillian Heights".

The Committee APPROVED the following:

That APPROVAL be given to amend the draft approved subdivision now owned by Lillian Heights Limited, under Regional File No. 25T-79018, City of Hamilton File No. SA-79-09 by changing condition (a) as follows:

- (a) That this approval apply to the plan prepared by A. J. Clarke and Associates, dated 1987 March 24, revised to show 174 lots, 3 blocks for 58 townhouse units, 2 blocks for 216 medium density apartment units, 10 blocks for development with adjacent land, two blocks for sewer easements, one block for open space purposes, one block as a walkway and five blocks for 0.3m reserves.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 March 8 respecting Zoning Application 88-114, for property at the rear of 1412 Upper Gage Avenue fronting onto Elmore Drive.

Mr. Strowbridge Jr., spoke on behalf of his father and expressed concerns that this development would cause flooding on their property. He added that they would not be opposed if a catch-basin were included in the application.

The agent for the applicant then spoke to the Committee on this matter.

The Committee then APPROVED the following recommendation and added a clause respecting that the grading plan must be to the satisfaction of the Regional Engineer:

- (A) That amended Zoning Application 88-114, Frank Bottega and Jackueleine Bottega, owners, requesting a changed in zoning from "L-mr-1" (Planned Development-Multiple Residential) District to "C" (Urban Protected Residential, etc.) District for property located at the rear of 1412 Upper Gage Avenue fronting onto Elmore Drive, as shown on the attached map marked as APPENDIX "B" BE DENIED for the following reason:

- (a) It would be inappropriate to leave the existing single-family dwelling located at 1412 Upper Gage Avenue in the "L-mr-1" (Planned Development-Multiple Residential) District, in that the property is not suitable for inclusion with adjoining lands for planned multiple residential development.

- (B) That APPROVAL be given to amended Zoning Application 88-114, Frank Bottega and Jackueleine Bottega, owners, requesting a change in zoning from "L-mr-1" (Planned Development-Multiple Residential) District to "C" (Urban Protected Residential, etc.) District for property located at 1412 Upper Gage Avenue, as shown on the attached map marked as APPENDIX "C" on the following basis:

Revision to  
draft approval  
of Subdivision  
"Lillian Heights"

ZA 88-114,  
rear of 1412 Upper  
Gage Avenue  
fronting onto  
Elmore Drive.



- (a) That the subject lands be rezoned from "L-mr-1" (Planned Development-Multiple Residential) District to "C" (Urban Protected Residential, etc.) District;
- (b) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593 and Zoning District Map E-38-C for presentation to City Council;
- (c) That the proposed change in zoning is in conformity with the Official Plan for the Hamilton Planning Area;
- (d) That the Eleanor Neighbourhood Plan be amended by redesignating the subject lands from "Low Density Apartments" to "Single and Double" Residential;
- (e) The Schedule "B" to By-law No. 79-275, as amended by By-law No. 87-223, respecting Site Plan Control be amended by adding the subject lands thereto and that in this regard, the applicant be required to submit only a grading plan to the satisfaction of the Regional Engineer.

NOTE: The purpose of the By-law is to provide for a change in zoning from "L-mr-1" (Planned Development-Multiple Residential) District to "C" (Urban Protected Residential, etc.) District for property located at 1412 Upper Gage Avenue.

The effect of the By-law is to establish appropriate zoning for the existing dwelling fronting on Upper Gage Avenue, and permit the severance of the rear portion of the property to create a building lot for a single-family detached dwelling fronting onto Elmore Drive.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 March 10 respecting Amended Zoning Application 88-105, for property at 252 Gibson Avenue North.

The Committee APPROVED the following:

That APPROVAL be given to an amended Zoning Application 88-105, D. Nocciolino, owner, requesting a modification to the established "D" (Urban Protected Residential - One and Two-Family Dwellings, Townhouses, etc.) District regulations for property at 250 Gibson Avenue North (Block "1"), and a further modification to the "D" District regulations for property at 252 Gibson Avenue North (Block "2"), as shown on the attached map marked as APPENDIX "D", on the following basis:

- (a) That the "D" (Urban Protected Residential - One and Two Family dwellings, Townhouses, etc.) District regulations as contained in Section 10 of Zoning By-law No. 6593, as amended by By-law No. 76-61, applicable to the lands described as Blocks "1" and "2", be modified to include the following variance as a special provision:
  - (i) That notwithstanding Section 10.(1) the following commercial uses shall be permitted:
    - 1. An auto body and fender repair shop within the existing building.
    - 2. A public garage, except that no motor-driven vehicles shall be displayed for sale, bought or sold on the property.
- (b) That the amending By-law be added to Section 19B of Zoning By-law No. 6593 as Schedule S-459a, and that the subject lands on Zoning District Map E-21 be notated S-459a;
- (c) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593 and Zoning District Map E-21 for presentation to City Council;

Amended ZA 88-105, 252 Gibson Avenue North.

- (d) That the proposed modification in zoning is in conformity with the Official Plan for the Hamilton Planning Area.

NOTE: The purpose of the By-law is to provide for a modification to the established "D" (Urban Protected Residential - One and Two Family Dwellings, Townhouses, etc.) District regulations for property located at 250 Gibson Avenue North (Block "1"), and a further modification to the "D" District regulations for property at 252 Gibson Avenue North (Block "2").

The effect of the By-law is to permit, in addition to the uses allowed under the "D" District regulations, the following uses:

- (a) The existing auto body and fender repair shop;
- (b) A public garage, except that no motor-driven vehicles shall be displayed for sale, sold or brought on the property.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 March 3 respecting Zoning Application 88-116, for property at the north-east corner of Quaker Crescent and Queen Victoria Drive.

The Committee APPROVED the following:

That APPROVAL be given to Zoning Application 88-116, S. Khan, owner, for a change in zoning from "C" (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District, for property at the north-east corner of Quaker Crescent and Queen Victoria Drive, as shown on the attached map marked as APPENDIX "E", on the following basis:

- (a) That the subject lands be rezoned from "C" (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District;
- (b) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593 and Zoning District Maps E-49B and E-49C for presentation to City Council;
- (c) That the proposed change in zoning is in conformity with the Official Plan for the Hamilton Planning Area.

NOTE: The purpose of the by-law is to provide for a change in zoning from "C" (Urban Protected Residential, etc.) District to "R-4" (Small Lot Single-Family Detached) District, for property located at the north-east corner of Quaker Crescent and Queen Victoria Drive.

The effect of the by-law is to permit the subdivision of the subject lands into four lots for small lot single-family dwellings.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 March 3 respecting Zoning Application 88-125, for property on the east side of Upper James Street south of Rymal Road East.

The Committee APPROVED the following:

That APPROVAL be given to Zoning Application 88-125, Chrysler Canada Limited, lessee, for a change in zoning for Block "1", from "HH" (Restricted Community Shopping and Commercial) District, modified to "G-1" (Designed Shopping Centre) District, and Block "2" from "G-1" (Designed Shopping Centre) District to "HH" (Restricted Community Shopping and Commercial) District modified, for property located on the east side of Upper James Street south of Rymal Road East, as shown on the attached map marked as APPENDIX "F", on the following basis:

- (a) That the lands described as Block "1" be rezoned from "HH" (Restricted Community Shopping and Commercial) District, modified to "G-1" (Designed Shopping Centre) District;

ZA 88-116 -  
north-east  
corner of  
Quaker Crescent  
and Queen Victoria  
Drive.

ZA 88-125 -  
east side of  
Upper James  
Street, south  
of Rymal Road  
East.

- (b) That the lands described as Block "2" be rezoned from "G-1" (Designed Shopping Centre) District to "HH" (Restricted Community Shopping and Commercial ) District, modified;
- (c) That Schedule "A" to By-law No. 88-93 be amended by adding the lands described as Block "2" thereto, and deleting the lands described as Block "1" therefrom;
- (d) That the amending By-law be added to Section 19B of Zoning By-law No. 6593 as Schedule S-1071a, and that the lands described as Block "2" be notated as S-1071a on Zoning District Map E-9E;
- (e) That the City Solicitor be directed to prepare a By-law to amend Zoning By-law No. 6593, as amended by By-law No. 88-93, and Zoning District Map E-9E for presentation to City Council;
- (f) That the proposed change in zoning is in conformity with the Official Plan for the Hamilton Planning Area.

NOTE: The purpose of the By-law is to provide for a change in zoning for a strip of land on the east side of Upper James Street in the area south of Rymal Road East, on the following basis:

- (a) Block 1 - Change in zoning from "HH" (Restricted Community Shopping and Commercial) District, modified to "G-1" (Designed Shopping Centre) District.
- (b) Block 2 - Change in zoning from "G-1" (Designed Shopping Centre) District to "HH" (Restricted Community Shopping and Commercial) District, modified.

The effect of the proposed change in zoning is to permit the re-alignment of the property line to allow a more desirable parking arrangement for the existing restaurant (MacDonald's) to the north and the proposed automobile dealership (Chrysler) to the south.

ZA 88-128,  
189 Oak Avenue.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 March 3 respecting Zoning Application 88-128, for property at 189 Oak Avenue.

Report of the circularization was given as follows:

190 notices sent      7 in favour      10 opposed

Mrs. Obermeyer, 168 Oak Avenue spoke to the Committee and expressed concerns at how this property had been converted to date. The Building Department staff then provided a history on this matter. Mrs. Obermeyer expressed her opposition to this application.

Mr. Deli, 181 Oak Avenue spoke in opposition to this application and sited matters such as parking shortage and lack of maintenance of the property.

The applicant, Mr. Eric Charles addressed the Committee and out-lined the upgrading he has done to the building to date. He added that he wishes to make the building what he pays taxes for, i.e. 4 units.

The Committee then discussed this matter in great length and requested clarification on certain points from the staff with respect to such matters as zoning verifications, assessment, etc.



Following discussion on this matter the Committee then agreed to DENY this application as follows:

That Zoning Application 88-128, Eric Charles, owner, requesting a modification to the established "D" (Urban Protected Residential - One and Two Family, Townhouses, etc.) District regulations to permit 4 dwelling units in the existing building, for the property located at 189 Oak Avenue, as shown on the attached map marked as APPENDIX "G", BE DENIED for the following reasons:

- (a) It represents an intrusion of a multiple-unit dwelling into an area occupied primarily by one and two-family dwellings;
- (b) It represents an over-intensification of use, in that the property does not meet the minimum lot area requirement for a converted dwelling in a "D" (Urban Protected Residential - One and Two-Family Dwellings, etc.) District. The minimum lot area requirement is  $270.0\text{m}^2$  (2,906.26 sq.ft.), whereas the property only has  $167.22\text{m}^2$  (1,800.0 sq.ft.) of lot area. Furthermore, the proposed four dwelling units which range in floor area from approximately  $34.6\text{m}^2$  (372.4 sq.ft.) to a maximum of approximately  $45.9\text{m}^2$  (494.1 sq.ft.) do not provide the minimum  $65.0\text{m}^2$  (699.65 sq.ft.) of floor area for a "Class A Dwelling Unit";
- (c) Adequate parking and manoeuvring space cannot be provided for the five off-street parking spaces required for the converted dwelling; and,
- (d) Approval of the application would establish an undesirable precedent and set the stage for other land owners to convert their dwellings for multiple occupancy.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 February 20 respecting proposed Draft Plan of Subdivision "Wheten Court".

The owner of property at 206 Norrie Avenue questioned the use in this subdivision and staff reported on the proposed schedule for development.

The Committee then APPROVED the following:

- (a) That APPROVAL be given to Official Plan Amendment No. 72 to redesignate the subject lands from "Utilities" to "Residential", and that the City Solicitor be directed to prepare a by-law to amend the Official Plan for submission to the Regional Municipality of Hamilton-Wentworth.
- (b) That APPROVAL be given to Subdivision Application 88-20, City of Hamilton, owner, to establish a draft plan of subdivision on the north side of Mohawk Road East and the east side of Warren Avenue, subject to the following conditions:
  - (i) That this approval apply to the plan prepared by the Regional Department of Engineering, dated 1988 September 30, revised to show 24 lots.
  - (ii) That the street be dedicated as public highway on the final plan.
  - (iii) That the street be named to the satisfaction of the City of Hamilton and the Regional Municipality of Hamilton-Wentworth.
  - (iv) That the final plan conform with the Zoning By-law approved under The Planning Act.
  - (v) That such easements as may be required for utility or drainage purposes be granted to the appropriate authority.

Proposed  
Draft Plan of  
Subdivision  
"Wheten Court".



- (vi) That the owner provide the City of Hamilton with a certified list showing the net area and width of each lot and block in the final plan.
  - (vii) That the owner shall erect a sign in accordance with Section XI of the subsequent Subdivision Agreement prior to the issuance of a final release by the City of Hamilton.
  - (viii) That the owner agree in writing to satisfy all requirements, financial and otherwise, of the City of Hamilton.
- (c) That the subdivision agreement BE ENTERED into by the Corporation of the City of Hamilton and the owner to provide for compliance with the conditions of approval established by the Hamilton-Wentworth Region with respect to this application (SA-88-20), Corporation of the City of Hamilton, owner, proposed draft plan of subdivision, and that the City execute the agreement when the said conditions have been met and the City's share of the cost of installing municipal services has been approved by City Council.

Site Plan Control Application DA-88-48 and modification to ZA 87-48, for property at 1400 Upper James Street.

The Committee was in receipt of a report from the Commissioner of Planning and Development dated 1989 March 8 respecting Site Plan Control Application DA-88-48 and a modification to Zoning Application 87-48, for property at 1400 Upper James Street.

Mr. J. Sakala of the Planning Department outlined this report.

Mr. Bob Morris of 1452 Upper James Street spoke in opposition to this matter. He expressed concerns that he understood that the items not resolved at Public meetings would be brought back to another Public meeting for further discussion. He indicated that he feels he was by-passed in this process.

Alderman Ross then outlined the concerns that the neighbouring church has about the proposed walkway beside the graveyard as well as other discussions which had ensued on this matter.

Mrs. Dickens, 1428 Upper James Street spoke to the Committee. She indicated that she is a member of Barton Stone United Church which is the neighbouring church to the development. She added that she would like to see the development follow some of the type of old style characteristic in the church. She added concerns at the hours of operation for the businesses in this development, particularly on Sunday when they would affect worship.

The Committee then APPROVED the following:

- (A) That approval be given to Site Plan Control Application DA-88-48 by Bayfield Green Development Company, owner of lands at 1400 Upper James Street for a commercial development for a White Rose Nursery, Cashway Building Centre, restaurant and retail stores subject to the following:
- (a) Finalization of the By-law for the proposed development incorporating the approvals of Zoning Application ZA-87-48;
  - (b) Modification to the plans related to notes, grading and dimensions as marked in red on the plan;
  - (c) Submission of a revised site plan to the satisfaction of the Director of Traffic Services to resolve truck manoeuvring details;
  - (d) Dedication to the Region of Hamilton-Wentworth, for a road widening of approximately 3.048m along Upper James Street;
  - (e) Provision on the plan to include a traffic sign schedule to the satisfaction of the Director of Traffic Services;

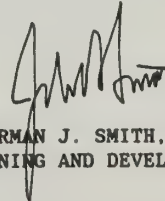
- (f) Provision of an appropriate agreement to provide for the sewer easement along and within the northerly portion of the subject lands, to the satisfaction of the Commissioner of the Hamilton-Wentworth Engineering Department;
  - (g) Provision of an appropriate agreement to provide for construction and dedication of the pedestrian walkway along and within the northerly portion of the subject land, to the satisfaction of the Commissioner of the Hamilton-Wentworth Engineering Department.
- (B) That Section 9 of the Third Report of the Planning and Development Committee, approved on 1988 February 9, in regard to Zoning Application 87-48, by Bayfield Green development Company, owner of lands at 1400 Upper James Street, BE AMENDED as follows:
- (a) To delete clauses (B)(f)(ii)(3) and (4), and add the following clauses in their place:
    - (i) (B)(f)(ii)(3)(i) No part of a side or rear yard used for outdoor storage area "A" as shown on Schedule "B", attached herewith and marked as APPENDIX "I", shall be situated less than 9.1 metres from the adjoining westerly lot line, less than 7.6 metres from the adjoining southerly lot line, and less than 3.0m from the adjoining northerly lot line.
    - (ii) (B)(f)(ii)(3)(ii) No part of a side yard used for outdoor nursery area "B" as shown on Schedule "B", attached herewith and marked as APPENDIX "I", shall be situated less than 3.0 metres from the adjoining westerly and southerly lot lines, and less than 4.6 metres from the adjoining easterly lot line.
    - (iii) (B)(f)(ii)(4) The Total area used for outside storage area "A" as shown on Schedule "B", attached herewith and marked as APPENDIX "I", shall not exceed 19% of the lot area.
  - (b) To repeal Schedule "B" and replace it with a new Schedule "B", attached herewith and marked as APPENDIX "H".

NOTE: The changes are required to clarify and designate outside storage area "A" and outside nursery area "B" as part of the By-law, and to revise Schedule "B" to show the various features of the development.

There being no further business, the meeting then adjourned.

Adjournment.

Taken as read and approved,



ALDERMAN J. SMITH, CHAIRMAN  
PLANNING AND DEVELOPMENT



Susan K. Reeder  
Secretary  
1989 March 15



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CSIP4



MS. C. DEITER  
URBAN MUNICIPAL LIBRARIAN

E. A. SIMPSON  
CITY CLERK  
K. E. AVERY  
DEPUTY CITY CLERK

CITY HALL  
HAMILTON, ONTARIO  
L8N 3T4

**THE CORPORATION OF THE CITY OF HAMILTON**  
OFFICE OF THE CITY CLERK

URBAN MUNICIPAL

1989 March 30th

APR 3 1989

GOVERNMENT DOCUMENTS

NOTICE OF SPECIAL MEETING

Planning and Development Committee  
Wednesday, 1989 April 5th  
1:30 o'clock p.m.  
Room 233, City Hall

Susan K. Reeder  
Secretary

SKR:dbm

NOTE: ALL MEMBERS OF CITY COUNCIL ARE INVITED  
TO ATTEND THIS SPECIAL MEETING.

A G E N D A

1. Sheraton Hotel.

\*Pis note.  
Some of the  
agenda is ed  
in error.







## FOR ACTION

REPORT TO: Mrs. S. K. Reeder  
Secretary, Planning and Development Committee

FROM: Mr. D. W. Vyce  
Director of Property

DATE: 1989 March 30  
COMM FILE:  
DEPT FILE: 80.4.436

SUBJECT: Sale Sheraton Hamilton Hotel

RECOMMENDATION:

1. That an Agreement incorporating the provisions set out in a Draft Agreement annexed hereto as Schedule "A" entitled Assignment of Ground Lease between Lakeview Development Ltd. as "Assignor", GGS Hotel Holdings Canada Inc. as "Assignee" and The Corporation of the City of Hamilton as "Lessor" with respect to an assignment of the Ground Lease between the City and Lakeview affecting the "Hotel lands" within Phase 3 of L.D.Jackson Square be approved and that the Mayor and City Clerk be authorized to execute this Agreement.
  - (a) That the City enter into an Indemnity Agreement incorporating the provisions set out in a Draft Agreement annexed hereto as Schedule "B" with GGS Co.Ltd. which provides in effect that GGS Co.Ltd., the parent Company of GGS Hotel Holdings Canada Inc. will perform the obligations of GGS Hotel Holdings Canada Inc. under the Ground Lease in the event of a default by GGS Hotel Holdings Canada Inc. and that it will save the City harmless from any loss, costs, claims, demands or damages arising out of any failure by GGS Hotel Holdings Canada Inc. to perform the terms and conditions of the Ground Lease, and that the Mayor and City Clerk be authorized to execute this Agreement.
  - (b) That the City return a Letter of Credit it is holding in respect of a prepayment of rent received by Lakeview pursuant to a Sublease Registered on December 31, 1984 after a good and valid surrender of the Sublease is registered on title to the Leased Premises.
2. That The Corporation of the City of Hamilton enter into a Lease Amending Agreement incorporating the provisions set out in a Draft Agreement annexed hereto as Schedule "C" with Lakeview Development Limited, First Phase Civic Square Limited, Second Phase Civic Square Limited, Fourth Phase Civic Square Limited, GGS Hotel Holdings Canada inc. and King Street Hamilton Hotel Limited Partnership which will provide that Lakeview pay to the City the sum of \$200,000.00 in exchange for an absolute release by the City in favour of Lakeview's obligations to enter into a Sublease with the City of the Hotel Parking as contemplated by the Ground Lease, the Interface Agreement and the Development Agreement and that the Mayor and City Clerk be authorized to execute this Agreement.

RECOMMENDATION - Continued...

3. That The Corporation of the City of Hamilton enter into the Pedestrian Bridge Agreement incorporating the provisions set out in a Draft Agreement annexed hereto as Schedule "D" with Lakeview Development Ltd. and Lakeview Development Ltd. and King Street Hamilton Hotel Limited Partnership for the purpose of granting an easement to the City in the Schedule "A" Leasehold land to construct, maintain and operate a climate controlled pedestrian bridge over King Street West, Hamilton, to connect the Plaza Level of the Hotel, adjacent L.D.Jackson Square facilities and premises of the City's Convention Centre and the Mayor and City Clerk be authorized to execute this Agreement. The Agreement also provides for the hours of operation and the division of annual maintenance costs (94% City - 6% Lakeview).

Furthermore, the Pedestrian Bridge Agreement authorizes an Agreement under which GGS Hotel Holdings Canada Inc. shall assume Lakeview's obligations.

4. That The Corporation of the City of Hamilton enter into the Truck Tunnel Easement Agreement incorporating the provisions set out in a Draft Agreement annexed hereto as Schedule "E" with Lakeview Development Ltd., and Lakeview Development Ltd. and King Street Hamilton Hotel Limited Partnership for the purpose of the City granting to Lakeview and King Street Hamilton Hotel Ltd. an easement to enter onto and use the new truck route beneath Copps Coliseum as a right-of-way for vehicular access only in a one way direction for the purpose of providing access to the loading docks for Lakeview and its suppliers. The easement will be enjoyed and used during the term of the Ground Lease (less one (1) day) (May 3, 1983 to October 30, 2069). It is further recommended that the Mayor and City Clerk be authorized to execute this Agreement. The Truck Tunnel Easement Agreement also authorizes an Agreement under which GGS Hotel Holdings Canada Inc. shall assume Lakeview's obligations.
5. That The Corporation of the City of Hamilton enter into a Hotel Management Amending Agreement incorporating the provisions set out in a Draft Agreement annexed hereto as Schedule "F" with Lakeview Development Ltd., GGS Hotel Holdings Canada Inc. and King Street Hamilton Hotel Limited Partnership which provides for a change in the hotel management responsibility from Lakeview as Hotelier to Lakeview in its capacity as manager for and on behalf of GGS Hotel Holdings Canada Inc., the prospective owners of the Hotel and that the Mayor and City Clerk be authorized to execute this Agreement.

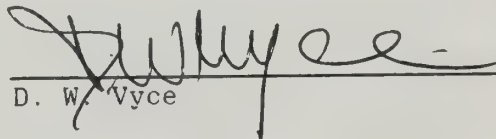
RECOMMENDATION - Continued...

6. That The Corporation of the City of Hamilton enter into an Assignment of Interface Agreement incorporating the provisions set out in a Draft Agreement annexed hereto as Schedule "G" with Lakeview Development Ltd., GGS Hotel Holdings Canada Inc., Second Phase Civic Square Limited and Fourth Phase Civic Square Limited which provides for an assignment of the existing Interface Agreement with Lakeview to GGS and a covenant by GGS to fulfill all the terms covenants and conditions of the Interface Agreement and that the Mayor and City Clerk be authorized to execute this Agreement.
7. That The Corporation of the City of Hamilton enter into a Release Agreement incorporating the provisions set out in a Draft Agreement annexed hereto as Schedule "H" with Citibank Canada and Lakeview Development Ltd. which provides for the release of all rights and obligations of the Bank effective August 23, 1985 from the Citibank Agreement since the Bank has been repaid in full for any monies advanced by the Bank to Lakeview and there are not outstanding obligations to the City by the Bank under the Citibank Agreement and that the Mayor and City Clerk be authorized to execute this Agreement.
8. That the Certificate of Final Completion incorporating the provisions set out in a Draft Certificate annexed hereto as Schedule "I" be issued by The Corporation of the City of Hamilton to GGS Hotel Holdings Canada Inc. and Lakeview Development Ltd. recognizing that the Hotel Improvements have been completed in conformity with the Final Working Drawings and specifications and the Developer has installed the furnishings, fixtures and equipment and has otherwise complied with the opening requirements as set out in Schedule "K" of the Development Agreement.
  - (a) That Mr. D. W. Vyce, Co-ordinator of the Lloyd D. Jackson Square as Chairman of the Review Authority and Alderman W.M. McCulloch, as a Member of the Review Authority be authorized to execute the Certificate of Completion on behalf of the City.
9. That The Corporation of the City of Hamilton issue an Estoppel Certificate incorporating the provisions set out in a Draft Certificate annexed hereto as Schedule "J" to GGS Hotel Holdings Canada Inc. and GGS Co. Ltd. certifying that the City's Development Agreement and Ground Lease with Lakeview are in good standing, subject to the Agreements mentioned therein being registered by Lakeview and that the Mayor and City Clerk be authorized to execute this Certificate.



RECOMMENDATION - Continued...

10. That the Certificate regarding the "Original Development Agreement" incorporating the provisions set out in a Draft Certificate annexed hereto as Schedule "K" be issued by the Review Authority on behalf of the City certifying that the Developer, Greater Hamilton Developers Limited has no outstanding obligations with regard to the property upon which the Sheraton Hamilton Hotel is situated, under the Original Development Agreement, save as set out in the Interface Agreement or contained in the Ground Lease between the City and Lakeview.
- (a) That Mr. D.W. Vyce, Co-ordinator of the Lloyd D. Jackson Square be authorized to execute this Certificate on behalf of the City as a member of the Review Authority.

  
D. W. Vyce

FINANCIAL IMPLICATIONS: (IF NONE, STATE N/A)

The City will be receiving a payment of \$200,000.00 from Lakeview as detailed under Recommendation 2 and Section 2 of the Background information in this report.

# LIST OF SCHEDULES

(attached to and forming part of an Agreement dated December 17, 1986 entered into between THE CORPORATION OF THE CITY OF HAMILTON and LAKEVIEW DEVELOPMENT LTD.)

- |              |   |  |
|--------------|---|--|
| Schedule "A" | - | Legal description of new truck route               |
| Schedule "B" | - | Legal description of Lakeview's leasehold premises |
| Schedule "C" | - | Blank form of Undertaking Agreement                |



FOR ACTION

REPORT TO: Mrs. S. K. Reeder  
Secretary, Planning and Development Committee

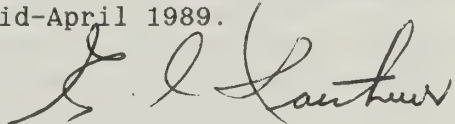
FROM: Mr. E. C. Matthews  
Treasurer

DATE: 1989 March 31  
COMM FILE:  
DEPT FILE:

SUBJECT: *Financial Capabilities of GGS Hotel Holdings Canada Inc.,  
purchaser of the Sheraton Hamilton Hotel*

RECOMMENDATION:

That City Council endorse the recommendation of the City Treasurer that GGS Hotel Holdings Canada Inc. (recently incorporated in the Province of Ontario and a wholly owned subsidiary of GGS Co. Ltd., a Japanese Corporation) has the financial capabilities to assume the ownership of the Sheraton Hamilton Hotel from Lakeview Development Ltd. effective in mid-April 1989.



FINANCIAL IMPLICATIONS: (IF NONE, STATE N/A)

None. GGS Hotel Holdings Canada Inc. a responsible Canadian Corporation is assuming all the obligations of Lakeview Development Ltd. to the City of Hamilton.

BACKGROUND:

Many hours have gone into making this agreement come together for the consideration of Council by our legal staff, and the legal staff hired by Lakeview and GGS along with Mr. Vyce.

As City Treasurer my role is to advise Council on the financial condition and viability of the Japanese corporation and the Canadian subsidiary, GGS Hotel Holdings Canada Inc. Essentially I have examined the financial statements of the two Japanese corporations involved and I will outline my observations to you one corporation at a time.

Before I do this however, I would like to remind Council that the agreement states the City cannot unreasonably withhold its approval which I have interpreted to mean is not necessarily the same as wholeheartedly approving the deal.



1989 March 31

Mrs. Susan Reeder  
Secretary, Planning and Development Committee - Page 2

BACKGROUND - continued

GGs Co. Ltd. - (copy of the audited financial statements to be reviewed with Council on a confidential basis, but a company brochure is enclosed herewith as Exhibit "A")

According to the audited financial statement for the year ended March 31, 1988, this company has been profitable both in 1988 and the comparative year shown for 1987. They have assets of over a billion dollars (U.S.). Current assets exceed current liabilities which is another comment.

The company was established in 1968 as the Girza Golf Service Co. Ltd. dealing in golf club memberships which, unlike North America, is big business wherein memberships are bought and sold in the range of one half to one million dollars or more. The corporate history since that time is one of expansion to the point the company is progressing into the Hotel business in Hong Kong, Hamilton and elsewhere in the world.

The Japanese auditing firm, Otemon Audit Corporation, confirm that the financial condition of the company has not changed materially from the financial position stated as at March 31, 1988 per their attached letter dated March 18, 1989 (Exhibit "B").

GGs Hotel Holdings Canada Inc. (Financial statement attached - Exhibit "C")

This is the corporation wholly owned by GGS in Japan which will own the Hotel. As stated, it was recently incorporated for this purpose and the incorporation documents received are consistent with this objective.

What I have requested and received is a Pro Forma Balance Sheet which is a statement that shows the financial position of this company after giving effect to the proposed acquisition. This unaudited statement has been prepared by Price Waterhouse, Chartered Accountants (a large and reputable national firm), and it states an acquisition price of \$34 million for the hotel, offset by an unsecured loan from GGS Co. Ltd. of \$24 million and equity from GGS of \$10 million. My understanding is the unsecured loan from GGS will originate by a loan from a Japanese bank to the parent company. This \$10 million for equity is confirmed in a letter attached from GGS Co. Ltd. (Japan) dated March 18, 1989 (Exhibit "D") and in a letter from McMillan, Binch, Barristers and Solicitors, Toronto, for GGS Co. Ltd. dated March 23, 1989 (Exhibit "E").

1989 March 31

Mrs. Susan Reeder  
Secretary, Planning and Development Committee - Page 3

BACKGROUND - continued

Capital Gain to Lakeview on Sale of the Hotel to GGS

Some members of Council have requested that staff look into the possibility of assigning a portion of the capital gain Lakeview may realize on the sale of the Hotel to the City of Hamilton.

The main reasons why Hamilton cannot share in this gain (assuming there is one) are as follows:

- (1) No agreement between Lakeview and the City provides for this benefit to the City;
- (2) The \$1,283,050 paid by the City for the sub-basement will be returned in current dollars to the City in the form of rental payments for 10 years commencing in the mid-1990's. The bridge was paid for by the City, less a \$64,840.00 contribution by Lakeview, and the Parking Garage capital expenditure is covered separately in the agreements attached to Mr. Vyce's letter.

Conclusion

After much personal attention to this matter and after consultations with our auditors and bankers which included the use of their international networking facilities, I am of the opinion it would not be reasonable for the City to withhold its approval based on the information and documentation supplied to me.

Att'd

c.c. All Members of Council  
Pannell Kerr MacGillivray, Chartered Accountants,  
Attention: Mr. M. Collyer, FCA  
Canadian Imperial Bank of Commerce,  
Attention: Mr. G. Lethbridge, Vice-President  
Mr. L. Sage, Chief Administrative Officer  
Mr. K. A. Rouff, Attention: Mr. D. A. Powers  
Mr. D. W. Vyce, Director, Property Department



BACKGROUND:

Approximately twenty years ago, the City, with Federal and Provincial participation undertook a massive Urban Renewal Program in the downtown core of the City encompassing lands between Main Street West, York Boulevard, Bay Street and James Street. The object of this program was to acquire and clear the lands and prepare it for new, higher and better uses. This Civic Square Urban Renewal Area has over the years been improved with the Board of Education Centre, an Art Gallery, Hamilton Place, The Hamilton Convention Centre, a new Public Library, Copps Coliseum, the Lloyd D. Jackson Square Shopping Centre and the Sheraton Hamilton Hotel. The lands have been developed in phases, the latter two phases being Copps Coliseum and the Hotel.

This report proposed to deal with the Hotel Development.

Redevelopment proceeded in the block of land bounded by King Street West, Bay Street North, York Boulevard and James Street North in an orderly and phased fashion commencing at the corner of King Street West and James Street North and moved in a westerly direction. As development spread, the L.D. Jackson Square Shopping Mall as we know it today also expanded together with the presence of three office towers situated above the mall.

A site for a Hotel Development across from the Hamilton Convention Centre remained undeveloped for years. Notwithstanding continuous efforts by the City to attract a major Hotel developer, the City was unsuccessful for a number of reasons, primarily economic.

During 1981 however, the City's efforts came to fruition. A Development Agreement between the City and Lakeview Development Ltd. was entered into which called for Hotel development and retail stores to rise on the site. Substantial and very complex negotiations were undertaken between the parties at that time in an effort to secure an agreement.

It was absolutely necessary for the City to contribute financially towards the project or else the project would not proceed. As the Hotel development was part of the Federal/Provincial Civic Square Urban Renewal Area, under the Civic Square Redevelopment Plan, the City provided the following assistance:-

- (a) a subsidized land rental, similar to the rate prevalent throughout the entire L.D. Jackson Square lands,
- (b) a financial contribution towards the 74 underground parking spaces beneath the Hotel itself, which amounted to \$782,500.00,
- (c) a financial contribution towards the construction of the sub-basement level of space in the hotel in the sum of \$1,283,050.00.



BACKGROUND - Continued...

In return, besides the rather obvious benefits of having a major hotel development in place in our City and reaping the taxes, jobs and visitor and convention advantages it creates, the City was to enter into a Sublease with Lakeview and a Pooled Parking Agreement with Jackson Square for the operation of the underground parking spaces and derive any revenue produced by the parking facility. Furthermore, the monies paid out by the City for the construction of the sub-basement level space are to be repaid to the City completely as additional rent between the eleventh and twentieth years of the Ground Lease in accordance with the specific terms therein. Numerous other Agreements were entered into between Lakeview and the City, all required prior to the Hotel Development taking place. Additional Agreements between the parties are still required and will be the topic of further discussion within this report.

During the month of December 1988, the City was notified formally by Lakeview that it proposed to dispose of its interests in the ownership of the Hotel to GGS Hotel Holdings Canada Inc., a private Ontario Corporation, a subsidiary of GGS Co. Ltd. of Japan origin and one highly connected in the tourist industry.

The Ground Lease between Lakeview and the City for a term of approximately 86 and one-half years contains a covenant that Lakeview shall not assign the Lease or sublet the Leased Premises without the consent of the City. This of course prompted Lakeview to formally request the consent of the City to assign the lease to GGS.

The upshot of the request has been the City's total involvement over the past three months in numerous meetings and an absolutely overwhelming exchange of correspondence and debate on the many issues and matters to be completed prior to the City's consent being given.

This report and the recommendations contained therein will address the issue of the consent to assign and the completion of the pending Agreements to be settled with Lakeview prior to the assignment approval.

1. Assignment of Ground Lease

Lakeview and the City entered into a Ground Lease dated May 3, 1983 for a term of approximately 86 and one-half years with respect to the Hotel lands. The Ground Lease contains a covenant on the part of Lakeview not to assign the Lease or Sublet the Leased Premises without the consent of the City.

Lakeview has agreed to assign the Lease to GGS Hotel Holdings Canada Inc. (GGS), subject to obtaining the City's consent.

BACKGROUND - Continued:..

An Assignment of Ground Lease Agreement has been negotiated with Lakeview and GGS which is in a form satisfactory to our legal advisors, Weir and Foulds and protects the City's interests. The assignment shall not take place until Council approval. In essence, GGS will take the place of Lakeview with respect to the Ground Lease and be responsible for fulfilling all of the obligations under the Ground Lease currently in existence.

By approving of this Assignment, the City is also agreeing to release a Letter of Credit of Lakeview it is holding pursuant to a previous Sublease by Lakeview to the King Street Hamilton Hotel Ltd. Partnership. The City is agreeing to return this Letter of Credit upon receipt of a good and valid surrender of the Sublease as it is no longer required.

Mr. E.C. Matthews, City Treasurer has obtained private financial records with respect to the Japanese parent company, and the new Ontario Incorporated Company, and will be making a separate report to the Committee on their financial capabilities.

GGS Co. Ltd., the parent Company of GGS Hotel Holdings Canada Inc. (GGS) shall, through an Indemnity Agreement, agree to perform and observe all obligations of GGS under the Ground Lease from and after the Assignment and to indemnify the City and save the City harmless from all claims and demands arising out of any failure by GGS to perform such obligations.

The Indemnifier, GGS. Co. Ltd. is a Japanese company. Weir and Foulds have required an opinion from a Japanese solicitor confirming that the Indemnity Agreement is in fact enforceable. To date, we have not received that opinion. Weir and Foulds expect the opinion to be qualified to a great extent. Furthermore, to enforce our rights under the Indemnity Agreement, the City would be required to sue the Indemnifier in Japan.

Weir and Foulds in summary indicate that while the City has an Indemnity Agreement, they caution that there are severe limitations on the usefulness of the Indemnity Agreement.

BACKGROUND - Continued...

2. Lease Amending Agreement

This Agreement releases both Lakeview and the City from their obligations to enter into a Sublease of the Hotel Parking as contained in the Ground Lease and The Development Agreement.

During 1981, the City entered into a Development Agreement with Lakeview which in part called for the City to provide at its expense no less than 80 underground parking spaces within the Hotel complex. In addition, the Agreement provided that the City shall pay for the cost of construction of the Sub-basement level of the Hotel at an estimated cost of \$1,283,050.00. The Sub-basement monies will be recovered by the City during the 11th to 20th years of the Ground Lease. This aspect of the Ground Lease is proposed to remain unchanged. The funding provided to Lakeview for the parking alone was \$782,535.00.

The rationale in offering these two sums of money to Lakeview, besides the obvious of encouraging major Hotel development in Hamilton was that the City would recover the monies over a given period of time.

The underground parking monies it was said would be recovered over the term of the Ground Lease, by entering into a Sublease with Lakeview for the parking area. In essence, the City would be operating the underground parking facility in accordance with the Sublease, generating revenue to the City in return for its expenditure in the said underground parking.

To further complicate matters, under the 1984 Hotel Interface Agreement the Hotel parking was to be integrated with Yale's Jackson Square Parking under a "Pooled Parking Agreement".

For the past four years, the City has been attempting to negotiate this Parking Sublease with Lakeview and the "Parking Pooling Agreement" with Yale's solicitor, Mr. J. Milligan. After many days of meetings and countless letters and telephone conversations between the parties, it became apparent to me that we were making little headway towards resolving the issues between us.

It also became clearly apparent to me that our projected net revenue of \$26,000.00 would in no uncertain terms, not be achievable. As a matter of fact, over the long term, I could visualize very little net revenue being realized by the City if in fact the City was to be saddled with the expense of maintaining some of the major component parts of the parking structure, i.e. doors, ticket dispenses, compressors for air ventilation, heaters and most importantly, the floor membrane.



BACKGROUND - Continued...

For this reason and as a means to solving the relative standstill in our negotiations, I believe my alternative proposal set out below is in the best interests of the City.

I as the Director of Property and the Co-ordinator of the L.D. Jackson Square, with the support of Mr. L. Sage and Mr. E.C. Matthews, proposed an alternative arrangement which I believed would solve the dilemma we faced and at the same time, firmly believed would be in the best interests of the City.

The proposal is for the Ground Lease to be amended to release the City and Lakeview from entering into the Parking Sublease. What this means is that the City will not be operating the parking either on its own or in conjunction with the L.D. Jackson Square facility. In the alternative, Lakeview shall pay to the City the sum of \$200,000.00 upon execution of this Lease Amending Agreement.

On the surface, one could say that this proposal is not fair and reasonable for the City as it has provided \$782,500.00 for the parking and is receiving only \$200,000.00 in return.

I submit however that the lump sum payment to the City of \$200,000.00 is more advantageous to the City than if it were to operate the parking over the term of the Ground Lease, for the net revenue the \$200,000.00 will produce over the same period of time will be greater in my opinion than the net revenue the operation of the 80 space car parking facility will produce.

In a report to Council on May 27, 1986, it was indicated that the net revenue expected to be produced by the parking was \$26,000.00 per year after the payment of certain expenses. At the time of estimating this projected net revenue of \$26,000.00, a Parking Sublease was not in place and all of the expenses proposed to be passed on to the City as operator of the parking spaces were unknown or not considered our responsibility.

As further evidence to its fairness, during the years 1984-86, at the time when the negotiations for the Sublease were initially undertaken, the City's underground parking garage produced at best, a net return on investment of 1.3%. The sum of \$200,000.00 if accepted by the City, and invested, for example at 10% interest, will produce a return of \$20,000 per annum or a 2.6% return on investment.



BACKGROUND - Continued...

I strongly believe this alternative arrangement of securing a return of the City's initial investment in the underground parking at the Sheraton Hotel is in the best interests of the City. We achieve our initial goal of recouping our funds over the long term, and at the same time rid ourselves of the burden of operating the facility either ourselves or through others which I submit will produce a far lesser return to the City.

As a result, it is recommended that the City enter into this Lease Amending Agreement.

3. Pedestrian Bridge Agreement

This Agreement provides an easement to the City to construct, maintain and operate a climate controlled Pedestrian Bridge over King Street West connecting the Plaza Level of the Hotel and L.D.Jackson Square to the Convention Centre. The Agreement provides that Lakeview shall pay for 6% of the cost of operating and maintaining the Bridge, with the City paying the remaining 94% of the cost. In the initial instance, Lakeview paid \$64,840.00 to the City for the construction of the Bridge or 6% of the total cost.

The Agreement calls for the Bridge to be open for pedestrian use at all reasonable hours but at the same time permits Lakeview or the City to close the doors to the bridge in extenuating circumstances.

Title to the Bridge shall be vested in and remain with the City, notwithstanding that it is affixed to Lakeview's Improvements.

Since Lakeview is contemplating assignment of all of its interests in the Hotel to GGS Hotel Holdings Canada Inc., this Pedestrian Bridge Agreement authorizes an Agreement under which GGS Hotel Holdings Canada Inc. shall assume Lakeview's obligations.

4. Truck Tunnel Easement

The Agreement provides for the grant of an easement in favour of Lakeview during the term of the Ground Lease (less one (1) day) (May 3, 1983 to October 30, 2069) over the Trunk Tunnel beneath Copps Coliseum, to use the new truck route as a right-of-way for vehicular access only in a one-way direction for Lakeview and its suppliers to have access to its loading dock.

BACKGROUND - Continued...

The City shall operate, maintain and repair the truck route with the costs to be shared amongst the users.

The Hotel Interface Agreement authorizes this Truck Tunnel Easement with Lakeview. Since its construction, the tunnel has in fact been used by Lakeview.

Since Lakeview is contemplating assignment of all of its interests in the Hotel to GGS Hotel Holdings Canada Inc., this Truck Tunnel Easement Agreement authorizes an Agreement under which GGS Hotel Holdings Canada Inc. shall assume Lakeview's obligations.

5. Hotel Management Amending Agreement

This Amending Agreement between the City, Lakeview, GGS and King Street Hamilton Hotel Limited Partnership is required to formally approve of the transfer of the operation of the Hotel from Lakeview to GGS. In actual fact, Lakeview will remain on in a capacity as manager of the Hotel on behalf of GGS.

6. Assignment of Interface Agreement

This Agreement between the City, Lakeview, GGS, Second and Fourth Phase Civic Square Ltd. provides for an assignment of the Interface Agreement to GGS as a result of their purchase of the Hotel. GGS agrees herein to fulfill all of the obligations provided in the existing Interface Agreement.

Furthermore, the Agreement stipulates that Lakeview will pay for certain below grade improvements to a maximum of \$27,000.00 to provide for the interconnection of the Hotel Parking with the L.D.Jackson Square Parking facility.

7. Citibank Canada Release Agreement

Under Section 6.07 of the Citibank Agreement, the rights and obligations of Citibank thereunder cease at such time as the Bank has been repaid in full for any monies advanced by the Bank to Lakeview. This Release Agreement confirms that Lakeview has repaid the Bank in full and that a cessation of charge in respect of such obligations has been registered and that the rights and obligations of the Bank ceased to be effective from August 23, 1985.

BACKGROUND - Continued...

8. Completion Certificate

Lakeview and GGS are requesting that the City issue a Certificate of Final Completion to them certifying that The Improvements have been completed in conformity with the Final Working Drawings and Specifications and the Developer has installed the furnishings, fixtures and equipment and has otherwise complied with the opening requirements as set out in Schedule "K" of the Development Agreement.

Lakeview has complied and accordingly, we recommend the City issue the Certificate of Final Completion. The Certificate will however contain a qualification that Lakeview will be required to enter into and deliver to the City a registerable Pedestrian Bridge Agreement as referred to earlier in this report.

The appropriate signing authorities on behalf of The Corporation of the City of Hamilton with respect to this Certificate is Mr. D.W. Vyce, Co-ordinator of the Lloyd D. Jackson Square as Chairman of The Review Authority and Alderman Wm. M. McCulloch, as a member of The Review Authority.

9. Estoppel Certificate

An Estoppel Certificate has been requested by GGS Hotel Holdings Canada Inc. certifying that the Development Agreement and Ground Lease are in good standing. The Agreements are in good standing, subject to Lakeview a number of other agreements, some referred to above, being registered on title in the Registry Office. Therefore, the City concurs with the issuance of The Certificate.

10. Certificate - Original Development Agreement

This Certificate has been requested by GGS Hotel Holdings Canada Inc. and Lakeview Development Ltd. confirming that the Developer under the "Original Development Agreement" dated September 3, 1970 (Greater Hamilton Developers Limited) has no outstanding obligations with regard to the Property under the said Agreement.

The City concurs with the issuance of this Certificate.

Attach.

- c.c. - Mr. L. Sage, Chief Administrative Officer
- Mr. K.A. Rouff, City Solicitor
- Mr. D.A. Powers, Solicitor's Department
- Mr. E.C. Matthews, City Treasurer

HOTEL MANAGEMENT AGREEMENT

THIS AGREEMENT made as of the            day of            ,  
1989.

B E T W E E N:

LAKEVIEW DEVELOPMENT LTD., a corporation incorporated  
under the laws of Canada

(the "Operator"),

OF THE FIRST PART

- and -

GGH HOTEL HOLDINGS CANADA INC., a corporation  
incorporated under the laws of the Province of Ontario

(the "Owner"),

OF THE SECOND PART

- and -

127089 ONTARIO LTD., a corporation incorporated under  
the laws of the Province of Ontario

("127089")

OF THE THIRD PART

NOW THEREFORE in consideration of the mutual covenants  
and agreements herein contained and for other good and valuable  
consideration (the receipt and sufficiency of which are hereby  
acknowledged), the parties agree as follows:

ARTICLE I

1.1        Definitions. In this Agreement:

- (a) "Affiliate" shall have the meaning set forth in the  
Canada Business Corporations Act;



- (b) "Capital Budget" means the final form of budget for Capital Expenditures to be made for the Hotel during any Operating Year as established and, if such is the case, amended pursuant to the provisions of Section 3.6;
- (c) "Capital Expenditures" mean all expenditures of the Hotel of a nature which are capitalized and not expensed in the financial statement of the Hotel, as determined in accordance with generally accepted hotel accounting practice consistently applied;
- (d) "Capital Item" means any item, the cost of which is a Capital Expenditure;
- (e) "Chartered Accountants" means the firm of chartered accountants selected from time to time by the Owner to report on the financial statement of the Hotel;
- (f) "Controller" means the person employed from time to time as controller of the Hotel;
- (g) "Date of Expropriation" means the date on which the expropriating authority is entitled to possession of the Hotel or any part thereof;
- (h) "First-Class Hotel" means the standards of a first class commercial trade hotel operating in the City of Hamilton, Ontario, as determined by the hotel industry;
- (i) "Fringe Benefits" means those benefits normally given to employees or personnel at any hotel including bonuses;
- (j) "Four-Star", with reference to the Hotel, means that the Hotel provides superior quality furnishings and a complete range of facilities, amenities, and guest services;
- (k) "Furniture, Fixtures and Equipment" means all furniture and furnishings from time to time used in the operation of the Hotel, including, without limitation, carpeting, rugs and other floor coverings, draperies, curtains, tapestries, screens, works of art, beds, mattresses, bedspreads, pillows, radios, television sets, whether located in guest rooms, offices or other public areas, and all hotel equipment, including, without limitation, all equipment used in the operation of kitchens, dining rooms, bars, laundry facilities, cleaning equipment,

office equipment, computers and computer equipment and machines, special lighting and other equipment of a like nature;

- (l) "General Manager" means the person employed from time to time as general manager of the Hotel;
- (m) "Ground Lease" means that certain ground lease of the Land dated as of the 3rd day of May, 1983 and registered January 31, 1984 in the Land Titles Office as No. 271066 C.D., between The Corporation of the City of Hamilton as Lessor and Lakeview Development Ltd. as Lessee, as amended by agreement dated May 3, 1983 and registered September 17, 1984 in the Land Titles Office as No. 292838 C.D. and by agreement dated July 29, 1983 and registered September 17, 1984 in the Land Titles Office as No. 292840 C.D.;
- (n) "Gross Revenue" means, for a particular period, all revenues and receipts of every kind derived from operating and managing the Hotel for such period including, but not limited to:
  - (i) commissions or discounts earned or received;
  - (ii) income, from both cash and credit transactions, from the rental of rooms (including service charges), banquet facilities and meeting rooms;
  - (iii) income from vending machines;
  - (iv) food and beverage sales made by the Hotel, including service charges of the Hotel;
  - (v) proceeds from business interruption or other loss of income insurance; and
  - (vi) food and beverage sales made from any restaurant in the Hotel;
  - (vii) rent and other payments received from lessees, licencees and concessionaires in the Retail Space and any other space forming part of the Hotel but not including charges to such lessees, licencees or concessionaires such as taxes, common area costs and premiums for insurance;

provided that Gross Revenue shall not include:

- (viii) tips or gratuities to Hotel employees;
- (ix) excise, sales and use taxes or similar impositions collected directly from patrons or guests or included as part of the sales price of any goods or services;
- (x) the proceeds of any sale of capital assets or of equipment for salvage or otherwise, the proceeds of insurance received in respect of capital assets lost or destroyed and any proceeds or award arising from expropriation;
- (xi) actual bad debts (but not any reserve in respect thereof); or
- (xii) rebates, discounts or credits of a similar nature;
- (o) "Head Office Personnel" means any member of the staff of the Operator operating on behalf of the Operator and not for the Hotel only;
- (p) "Hotel" means the Four-Star 17-storey hotel containing 310 equivalent guest bedrooms known as the Sheraton Hamilton Hotel located at 116 King Street West, Hamilton, Ontario, and includes approximately 19,000 square feet of retail and commercial space on the main floor;
- (q) "Hotel Development Agreement" means that certain agreement dated as of November 19, 1981 and registered on September 17, 1984 in the Land Titles Office as No. 292836 C.D. between The Corporation of the City of Hamilton and Lakeview Development Ltd., as amended by agreement dated as of August 3, 1982 and registered September 17, 1984 in the Land Titles Office as No. 292837 C.D. and as further amended by agreement referred to as the "Closing Agreement" dated as of May 3, 1983 and registered September 17, 1982 as No. 292838 C.D. and as further amended by agreement dated July 29, 1983 and registered September 17, 1984 as No. 292840 C.D. and as further amended by agreement dated August 21, 1985 and registered August 30, 1985 as No. 164283 L.T.;
- (r) "Licence Agreement" means the agreement dated as of the 14th day of August, 1985, between Sheraton Inns Canada, A Division of ITT Industries of Canada Ltd. as Licensor and King Street Hamilton Hotel Partnership and Lakeview Development Ltd. as Licensee and includes



the Sheraton Reservation System Agreement bearing the same date between the Licensee and Sheraton Reservations Corporation;

- (s) "Management Fee" means the fee established and paid pursuant to Section 5.1;
- (t) "Operating Budget" means the final form of budget for operations of the Hotel (including estimates of income and expenses) for any Operating Year established and, if such is the case, amended pursuant to the provisions of Section 3.6;
- (u) "original cost" means the cost of any Capital Item at the time it is acquired or installed in or at the Hotel;
- (v) "Operating Supplies and Expendables" means all operating supplies from time to time used in the operation of the Hotel including, without limitation, laundry supplies, preparation utensils, chinaware, glassware, silverware and hollow ware, service equipment and supplies, linens, housekeeping supplies, miscellaneous general supply items, uniforms, inventories of food and beverages, paper supplies and other such items that when used once are considered to be disposed of and all other similar items necessary or appropriate for the operation of the Hotel as contemplated by this Agreement;
- (w) "Operating Year" means the period of twelve (12) months starting on the 1st day of April and ending on the last day of March;
- (x) "Owner" means GGS Hotel Holdings Canada Inc., its successors and assigns;
- (y) "Retail Space" means the space within the Hotel comprising approximately 19,000 square feet of retail and commercial space on the main floor and such other space within the Hotel as may from time to time be so designated by the Owner; for greater certainty, "Retail Space" does not include any food and beverage facilities operated by the Operator; and
- (z) "Term" has the meaning set forth in Section 4.1.

1.2 Interpretation. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:



- (a) "this Agreement" means this agreement as it may from time to time be supplemented or amended by one or more written agreements between the parties hereto;
- (b) a reference in this Agreement to any "Article", "Section" or other subdivision is to the designated Article, section and other subdivision of this Agreement;
- (c) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision;
- (d) the headings are for convenience only and do not form a part of this Agreement nor are they intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;
- (e) the word "including", when following any general statement, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter; and
- (f) words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa.

1.3 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Province of Ontario.

## ARTICLE II

### APPOINTMENT OF OPERATOR

2.1 Appointment. The Owner hereby appoints the Operator as its exclusive agent to supervise, direct and control the management and operation of the Hotel for the Term. The Operator accepts such appointment and agrees to manage and operate the Hotel during the Term in accordance with the terms and conditions hereinafter set forth.

2.2 Standard of Care. In fulfilling its obligations hereunder, the Operator shall act honestly, in good faith and shall exercise the same degree of diligence and skill as would a reasonable and prudent operator of a similar hotel. In so doing, the Operator shall operate and manage the Hotel in a faithful and efficient manner in order to maximize the profitability of its operations.

### ARTICLE III

#### SERVICES TO BE RENDERED BY THE OPERATOR

3.1 Services of the Operator. The Operator shall undertake, on behalf and for the account of the Owner, the operation, management and marketing of the Hotel, including without limitation all organizational, sales, advertising, accounting, purchasing and employment functions required to operate the Hotel as contemplated by this Agreement, and the negotiation of contracts and credit arrangements normally entered into within the scope of hotel operations, provided that no such contract or agreement having a term exceeding one year or occasioning an annual aggregate liability to the Owner exceeding \$25,000, shall be entered into by the Operator without the prior written approval of the Owner.

3.2 Operations. The Operator shall generally manage all Hotel operations and specifically shall perform the following services:

- (a) With the approval of the Owner, establish the range of rates for rooms and rental of space in the Hotel;
- (b) Rent rooms and, in consultation with the Owner, negotiate leases and concessions in the Hotel;
- (c) Collect and give receipts for all room rentals and lease and concession payments;
- (d) Manage the restaurants and licenced premises in the Hotel including, with the approval of the Owner, setting prices and menus.

Provided: firstly, unless the Owner and the Operator otherwise agree, the range of rates for rooms and rental of space and the prices in the restaurants and licenced premises in the Hotel shall only be increased in any operating year beyond those rates and prices in effect in the immediately preceding operating year by the greater of five percent of those rates and prices in effect in the immediately preceding operating year or generally by an amount such that the rates and

prices are equal to those rates and prices shown to be in effect for similar hotel facilities within the geographical area of the City of Hamilton as such amounts are determined by an independent survey conducted by a party or parties acceptable to and approved by both the Operator and the Owner; and secondly, the Operator, acting reasonably, shall be entitled during that part of the term hereof up to the date, if it shall occur, upon which the Owner gives notice of termination of this Agreement to the Operator, to agree to such competitive rates and prices as it considers necessary to attract special groups and events such as conventions and/or special marketing programmes, all for the benefit of the operations of the Hotel.

**3.3      Other Duties.** The Operator shall perform on behalf of and for the account of the Owner, as required as part of the management of the Hotel:

- (a) the institution in the Owner's name of any lawsuit or other legal action having a direct link with the operations of the Hotel as required or approved in writing in advance by the Owner;
- (b) the supervision and control of the activities of guests, tenants, licensees, concessionaires and holders of privileges and their respective employees, including the eviction of guests and the enforcement of leases and other agreements for the use of Retail Space and with the prior written approval of the Owner any action to terminate any such lease or agreement, such approval to be given if the Operator can demonstrate to the satisfaction of the Owner, acting reasonably, that the tenant or other occupant is in material default; and
- (c) maintaining on behalf of the Owner a cordial, businesslike working relationship with the City of Hamilton and its officials and representatives including observing on the behalf of the Owner its obligations, if any, under the Development Agreement, the Ground Lease and agreements relating to parking and the pedestrian bridge.

**3.4      Maintenance.**

- (a) The Operator shall, on behalf of and for the account of the Owner, cause the Hotel (including without limitation the hotel building and the Furniture, Fixtures and Equipment) to be maintained in good operating condition and repair and shall replace such



items of the Furniture, Fixtures and Equipment and Operating Supplies and Expendables as from time to time may be appropriate in accordance with the then current Operating Budget or Capital Budget, as the case may be, so that the Hotel shall continue to operate as a First-Class Hotel. All items of Furniture, Fixtures and Equipment and Operating Supplies and Expendables, forthwith upon acquisition and receipt by the Operator of any payment therefor, shall be and become, without further act, the property of the Owner. The Operator shall make no expenditures for the repair and replacement of either the Furniture, Fixtures and Equipment or the Operating Supplies and Expendables or for maintenance and repair which would result in or cause a change in the general character of the interior or exterior of the Hotel.

- (b) The Owner agrees to provide funds to permit the Operator to fulfill its obligations under paragraph (a) above.
- (c) The Operator confirms that it will continue its maintenance of the Hotel and its performance of its obligations, in accordance with the terms hereof, notwithstanding that the Term may be expiring.

3.5 Alterations. The Operator may from time to time make, at the expense of the Owner, but subject to the terms of the then current Capital Budget, reasonable alterations suitable to a First Class Hotel to the Hotel subject, however, as follows:

- (a) no alteration shall be made which would:
  - (i) change the general character or design of the Hotel; or
  - (ii) involve excavation of any portion of the Hotel; or
  - (iii) change, or increase, the burden upon the foundation of the Hotel;

without the prior written approval of the Owner which the Owner may withhold in its discretion;

- (b) all permits, licenses and authorizations required in connection with any alteration shall be obtained by the Owner;
- (c) the Operator shall make any such alteration in a prompt and good and workmanlike manner and in



compliance with all applicable laws and insurance requirements;

- (d) the Owner shall promptly pay, or direct the Operator to pay on its behalf, the cost of any alteration so that the Hotel shall at all times be free from any construction lien or other charge for labour, services or material supplied or claimed to have been supplied to the Hotel;
- (e) if the estimated cost of the alteration exceeds \$25,000. such alteration shall:
  - (i) require the specific prior written approval of the Owner;
  - (ii) if the Operator proposes to have such alteration supervised by its personnel, require the specific prior written indication by the Owner as to whether such alteration shall require the supervision of an independent engineer or architect; and
  - (iii) if the Owner so indicates, be made under the supervision of an architect or engineer approved by the Owner and in accordance with detailed plans and specifications prepared by such architect or engineer and be performed by a contractor and upon terms approved by the Owner.

The Operator shall, at the request of the Owner, modify and/or replace from time to time the computer hardware and/or software used in connection with the Hotel and shall oversee all employee training and record-keeping modifications necessary in connection therewith. The Owner agrees to provide funds to permit the Operator to fulfil such obligations.

### 3.6 Operating Budget and Capital Budget.

- (a) On or before February 28th of each Operating Year, the Operator shall prepare and deliver to the Owner both a preliminary Operating Budget and a preliminary Capital Budget for the next ensuing Operating Year.
- (b) Each Operating Budget and Capital Budget shall be subject to the approval of the Owner. For a period of thirty (30) days after receipt of the preliminary Operating Budget and preliminary Capital Budget, the Owner shall be entitled from time to time to request further details and to make written or oral comments

and queries thereon. The Owner shall give good faith consideration to the preliminary Operating Budget and preliminary Capital Budget and shall not unreasonably refuse to accept any item thereon that is consistent with the terms of this Agreement. If the Owner does not respond to either or both such preliminary budgets within the thirty (30) day period, then the Owner will be deemed to have accepted either or both of them, as the case may be, as the Final Operating Budget and the Final Capital Budget for such Operating Year. If after giving good faith consideration to the preliminary Operating Budget or the preliminary Capital Budget, the Owner objects to any term thereof, the Owner shall, within the same thirty (30) day period, give the Operator notice of its objection and its proposal for amendment and the Owner and the Operator shall endeavour, both acting reasonably, to resolve their differences with respect thereto. In disputing any item, the Owner shall have regard to its obligation to provide, and the Operator's obligation to operate, a First-Class Hotel. The Owner acknowledges that notwithstanding the Operator's experience and expertise in relation to the operation of hotels, the projections contained in each Operating Budget are subject to and may be affected by, changes in economic circumstances beyond the control of the Operator.

- (c) the Operator may from time to time but not more than twice in any Operating Year, if necessary, amend either the final Operating Budget or final Capital Budget after giving the Owner not less than fifteen (15) days notice thereof and the reasons therefor, in which event the Owner shall have the right to approve or object to the same as set forth in paragraph (b) with the times being amended accordingly.
- (d) the Operator shall prepare and attach to each of the preliminary and final Operating Budgets a preliminary or final, as the case may be, marketing plan containing the following:
  - (i) an operating budget for the marketing department of the Hotel; and
  - (ii) reasonably detailed information relating to marketing programs the cost of which is reflected in the operating budget for the marketing department of the Hotel.

Upon the approval by the Owner of the final Operating Budget, none of the following events will occur without the prior approval of the Owner:

- (aa) a material change, addition or deletion to the marketing programs referred to in part (ii) above; and
- (bb) a material change in cost of any such marketing programs.

3.7 Books, Records, Financial Statements.

- (a) The Operator shall keep accurate and complete books of account and other records of the operations of the Hotel. All such books of account and records shall be the property of the Owner and shall be available to the Owner at the Hotel at all reasonable times for examination, audit and reproduction. Upon the termination of this Agreement, the Operator shall forthwith turn over such books and records to the Owner so as to ensure the orderly continuation of the operations of the Hotel; provided, however, all such books and records shall thereafter, for a period of four (4) years following such termination, be available to the Operator at the Hotel, at all reasonable times, for examination, audit and reproduction. The Operator shall pay all expenses incurred by the Owner in making such books and records available to the Operator.
- (b) On or before the 21st day of each month, the Operator shall furnish to the Owner its reasonably detailed financial statements of the previous month prepared in accordance with generally accepted hotel accounting practice consistently applied.
- (c) Within forty-five (45) days after the end of each Operating Year, the Operator shall furnish to the Owner its reasonably detailed financial statements of the previous Operating Year prepared in accordance with generally accepted hotel accounting practice consistently applied. Such statements shall be signed by one of the Operator's senior officers.
- (d) The Operator shall provide the Owner and the Chartered Accountants with sufficient information and access to the books and records of the Hotel to permit the Chartered Accountants to prepare within ninety (90) days of the end of each Operating Year an audit report on the Hotel and reasonably detailed financial



statements. The Owner shall forthwith provide the Operator with copies of such report and statements.

- (e) Within ninety (90) days after the end of each Operating Year, the Owner shall prepare and deliver to the Operator a certified statement of the Owner signed by one of its senior officers and showing the calculation of Gross Revenue and the Management Fee.
- (f) The Operator shall from time to time at the request of the Owner prepare such other financial statements or provide such other financial information relating to the operations of the Hotel as the Owner may reasonably request, all at the expense of the Owner.

### 3.8 Personnel and Employees.

The selection and supervision of the General Manager, the Controller, and all other personnel necessary for the proper operation of the Hotel shall be the responsibility of the Operator. All decisions with respect to hiring, promotion and discharge of the General Manager and the Controller and the terms of their respective employment, including compensation, shall be at the discretion of the Operator and upon the approval of the Owner. All decisions with respect to hiring, promotion and discharge of all other personnel and the terms of their respective employment, including compensation, shall be at the discretion of the Operator, provided that the Owner shall have the right of approval with respect to the eight most senior salaried employees (other than the General Manager and Controller), such approval either to be given or declined within 15 days after notice by the Operator to the Owner. Notices and recommendations shall provide sufficiently detailed resumes of the employees and the proposed terms of employment to enable the Owner to make a decision. Notwithstanding the provisions of this Section 3.8, the Owner hereby expressly approves of the continued employment, from and after the commencement of the term of this Agreement, of the General Manager, the Controller, and the eight most senior salaried employees presently engaged in the operation of the Hotel.

Labour Union. At any time that there is an employees' union certified as a bargaining representative for employees of the Hotel (the Owner hereby acknowledging the existing bargaining representative "Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351" and the collective agreement with said bargaining representative), the Operator shall deal with the employees' union on a day-to-day basis, ensure compliance by the Owner with the terms of the collective agreement with the union, and, in consultation with the Owner, shall negotiate new



collective agreements and deal with any grievances and disputes arising out of the collective agreement(s) and negotiation of a new collective agreement(s). Provided that, unless the Owner and the Operator otherwise agree, the terms of and renewal of any existing collective agreement and the negotiation of new collective agreements shall not exceed those terms contained and in effect under collective agreements in effect for similar hotel facilities within the geographical area of the City of Hamilton as such terms shall be determined by an independent survey conducted by a party or parties acceptable to and approved by both the Operator and the Owner.

**3.9           Marketing and Advertising.**

- (a) The Operator shall plan and implement all marketing, advertising and promotional activities and marketing policy for the Hotel, including definition of the Hotel policy regarding advertising and promotion, preparation of advertising documents and brochures, and distribution of such documents in the hotels of the Operator and other sales outlet.
- (b) All expenses of marketing under this Section 3.9 shall be an operating expense of the Hotel.

**3.10           Reservation and Sales System.**

- (a) The Operator shall integrate the Hotel in all reservation systems that are used by the Sheraton group of hotels and are appropriate for the Hotel including:
  - (i) the reciprocal reservation system among hotels of the Sheraton group of hotels;
  - (ii) toll-free telephone central reservation systems;
  - (iii) other sales and reservation systems chosen by the Operator and available under contract with the Sheraton.
- (b) The Owner shall endeavour to honour all reservations made by the Operator in accordance with this Agreement, including those made in accordance with this Agreement for periods after the termination of this Agreement.

**3.11           Operator Additional Obligations.   The Operator shall make available to the Hotel:**

- (a) services of the food and beverage division of the Operator used by the Operator group of hotels generally, to ensure the maximum efficiency and desired quality standards in the operation of the food and beverage services of the Hotel;
- (b) all department supervision, control and other services furnished to other hotels within the the Operator group of hotels; and
- (c) services used by hotels within the the Operator Group generally, in regard to the procurement of all Furniture, Fixtures and Equipment and Operating Supplies and Expendables and other goods and services required for the Hotel, on the terms as herein provided.

3.12 Limitation on Pledging Credit of Owner. The Operator may pledge the credit of the Owner without the prior consent of the Owner for purchases made in the ordinary course of business in the operation of the Hotel and within the scope of this Agreement, but the Operator shall not, in the name of or on behalf of the Owner, borrow any money or execute any promissory note, bill of exchange, or other obligation or mortgage or other encumbrance without the prior specific written consent of the Owner. To the extent the Operator uses or pledges its credit in making purchases on behalf of the Owner in the ordinary course of business in the operation of the Hotel and within the scope of this Agreement, the Owner shall pay for such purchases and shall indemnify the Operator against any liabilities and expenses, including, but not limited to, reasonable legal fees and disbursements, which may be incurred by the Operator by reason of the failure of the Owner so to pay.

3.13 Meetings. Senior representatives of each of the Owner and the Operator, all of whom shall have authority to make decisions in all matters relating to this Agreement, shall meet quarterly at a regularly scheduled time and place as shall be mutually agreed upon (unless in the case of any particular meeting they agree not to meet) and at such other times as either the Owner or the Operator, each acting reasonably, may require. All expenses of the Owner and the Operator for attending such meetings shall be borne by the Owner and the Operator separately and shall not be a cost to the operation of the Hotel.

3.14 Retail Space. The Operator shall operate, manage and market the Retail Space which duties shall include, where applicable, the obligations of the Operator with respect to the operation, management and marketing of the Hotel generally and which duties shall also include:



- (a) with the prior approval of the Owner, the settling of the terms of leases and renewals;
- (b) the collection of rent and other amounts payable by tenants;
- (c) the enforcement of tenant covenants and the performance of landlord covenants under leases; and
- (d) maintenance and repair of common areas.

Provided that, unless the Owner and the Operator otherwise agree, the terms of leases (including minimum and percentage rents where applicable) and renewals shall be similar to those terms and renewals in effect for other premises, located within the geographical area of the City of Hamilton, which are similar in nature to those premises in such leases and renewals as such terms are shown to be in effect as determined by an independent survey conducted by a party or parties acceptable to and approved by both the Operator and the Owner.

**3.15      Complimentary use of Hotel.**

- (a) The Operator provides certain perquisites to its directors, officers and employees covering complimentary use of or discount of, rooms, food, beverage and other charges for personnel and group functions in accordance with policies and procedures promulgated by the Operator from time to time for the the Operator group of hotels. The Owner agrees that the Hotel may participate in such policies and procedures so long as they are reasonable and the Owner has been given prior notice of all such polices and procedures; provided, however, that the complimentary use of rooms shall not exceed one (1%) per cent of the then available rooms per year and provided further that the General Manager shall use his discretion in determining if this practice should be suspended or modified during peak business periods. The limitations in this Section 3.15 relating to Operator policies shall not apply to established and recognized policies and practices within the hotel industry relating to discount and complimentary room practices for others not associated with the Operator and which are recognized methods of promoting the Hotel within the travel industry.

**3.16      Liquor Licences.** The Operator shall obtain and maintain, if available, any liquor licence necessary to operate the Hotel as a First-Class Hotel and the Owner shall co-operate with the the Operator with respect thereto.

3.17 Restrictive Covenant. During the term of this Agreement, the Operator shall not operate or manage or otherwise be affiliated with any full-service hotel or permit any affiliate of the Operator to operate or manage or otherwise be affiliated with any full-service hotel in either case within a 15-mile radius of the Hotel.

3.18 Compliance. The Operator shall, at the expense of the Owner to the extent appropriate according to the terms of this Agreement, operate the Hotel in compliance with applicable laws, ordinances and regulations and the terms of any agreements and mortgages or other security instruments affecting the Hotel of which the Operator has actual notice provided that such terms are not inconsistent with the terms of this Agreement.

#### ARTICLE IV

##### TERM

4.1 Term of this Agreement. The term of this Agreement shall be the period from April 1, 1989 to midnight on March 31, 1994.

#### ARTICLE V

##### MANAGEMENT FEE AND REIMBURSABLE EXPENSES

5.1 Management Fee. In consideration of performing its services under this Agreement, the Operator shall be entitled to a Management Fee in respect of each Operating Year equal to three (3%) percent of Gross Revenue for such Operating Year, payable and calculated monthly in arrears on the basis of three (3%) percent of the cash receipts for the month less sales tax and other amounts collected on behalf of third parties and less any rebates, allowances or refunds paid in respect of sales or other revenue, with an annual adjustment on the basis of Gross Revenue as shown on the certified statement of Gross Revenue and Management Fee contemplated by Section 3.7(e) of this Agreement, with any overpayment or underpayment of the fee being paid by the Operator or Owner, respectively, within fifteen (15) days of delivery of such certified statement.

5.2 Reimbursement of the Operator's Cost. The Owner shall also reimburse the Operator for, or the Operator may deduct from funds received by it in the operation of the Hotel, all reasonable expenses incurred by the Operator for the account of the Owner in the ordinary course of business in the operation of the Hotel and within the scope of this agreement which shall include, without limitation, the following:



- (a) all salaries, Fringe Benefits and expenses of persons employed at the Hotel on a full-time basis, including retirement plan contributions;
- (b) the per diem rate and the reasonable travel and out-of-pocket expenses of the Operator personnel assigned to special Hotel projects specifically approved in writing by the Owner. Such special projects may include special sales or marketing programs and assistance in opening new food and beverage facilities; and
- (c) reasonable travel and out-of-pocket expenses incurred directly in connection with the operation of the Hotel by the Head Office Personnel.

5.3 Hotel Bank Accounts. The Owner shall designate the banks with the the Operator shall conduct the various banking affairs the of the Hotel. The Operator shall deposit all funds received by it in the operation of the Hotel in one or more special accounts bearing the name of the Owner. All Hotel bank accounts shall be the property of the Owner but shall be under the control of the Operator. Cheques and other documents of withdrawal shall be signed only by persons authorized by the Operator. Out of such accounts, the Management Fees, all operating and payroll expenses and other expenses to be paid to or reimbursed to the Operator in accordance with the terms of this Agreement shall be paid by deduction therefrom. The Operator shall distribute to the Owner monthly or more frequently as requested and directed by the Owner any funds remaining after such expenses have been disbursed or for which an adequate reserve has been established on the recommendation of the Operator and with the agreement of the Owner.

5.4 Payment of Hotel Expenses. If the funds available from the Hotel operations for the payment of any of the expenses of the Hotel, including reimbursable expenses and Management Fee, shall be insufficient to pay the same as they become due and payable, the Owner shall forthwith upon written request from the Operator deposit sufficient funds in the Hotel bank accounts to make such payments.

5.5 Payment of Reimbursable Expenses. All fees or expenses payable to the Operator hereunder shall be deducted out of the bank accounts required to be maintained hereunder, or if requested by the Operator, may be remitted to the Operator at its address for notice or to such other place in Canada as it may from time to time designate by notice to the Owner.

5.6 Financing Program. The Owner shall establish and maintain and at the request of the Operator, from time to time

provide the Operator with a copy of, a financing program for the Hotel to ensure that there will be, at all times, sufficient funds to meet all liabilities and obligations of the Owner hereunder and all financial requirements of the Hotel, including the Management Fee, all reimbursable expenses and the costs of all replacements and Capital Expenditures. The Owner shall have sole discretion in determining the source of funds for any financing program.

## ARTICLE VI

### INSURANCE

6.1 Fire, etc. Insurance. The Owner shall, subject as hereinafter provided:

- (a) keep all insurable properties included in the Hotel insured against loss or damage by fire and all other insurable perils included in the broad form extended coverage endorsement available under fire policies in an amount not less than the full insurable value thereof, the term "full insurable value" to mean the actual replacement cost (including foundation, footings and excavation costs);
- (b) maintain business interruption insurance covering risk of loss due to the occurrence of any hazard described in paragraph (a) above in such amount as a prudent owner would carry including the fees and expenses payable by the Owner to the Operator under this Agreement;
- (c) maintain comprehensive public, products and innkeepers' liability and property damage insurance against claims for personal and bodily injury or death and property damage occurring in or about the Hotel or adjoining streets and sidewalks as a prudent owner would carry; and
- (d) maintain such other insurance (including without limitation, boiler and pressure vessel insurance and automobile liability insurance), against other insurable risks and in such amounts as a prudent owner would carry;

provided that the respective amounts and limits of such insurance may be varied based on what is the customary policy from time to time of the owners of other hotels in similar locations, having regard, however, to relevant circumstances including the availability and cost of such insurance and the type, construction, design, use and occupancy of the Hotel and



such other hotels, and provided that in all events such insurance shall comply with the requirements with respect thereto under the Ground Lease.

**6.2      Parties Insured, etc.** All insurance policies provided for in paragraph (b) and (c) of Section 6.1 and (to the extent appropriate, in the opinion of the Owner, acting reasonably, in paragraph (d) of Section 6.1) shall include the Operator as a party insured thereunder, as its interests may appear, and may contain, in the case of insurance against damage or destruction, mortgage endorsements in favour of any mortgagees of the Hotel. All insurance policies referred to in Section 6.1 shall provide that the same may not be cancelled or materially modified until at least thirty (30) days after prior notice to the Owner, the Operator, the Landlord under the Ground Lease and any mortgagees of the Hotel. The Operator shall be provided copies of all such policies. The policy or policies of insurance referred to in paragraph (a) of Section 6.1 shall either:

- (a) insure the Operator as its interest it may appear; or
- (b) contain an endorsement providing that the insurance company waives any right of recovery against the Operator on account of any loss payable under such policy or policies.

## ARTICLE VII

### DESTRUCTION

**7.1      Owner to Restore Insured Casualty.** Subject to the Ground Lease and to Section 7.2, if the Hotel is damaged or destroyed by any cause for which insurance coverage was maintained hereunder, then the Owner shall repair, restore, replace or rebuild the Hotel or the damaged part thereof, as the case may be (herein called the "Casualty Restoration") as nearly as is reasonably possible to its condition immediately prior to the occurrence of such damage or destruction. The Operator shall co-operate with the Owner in obtaining all insurance proceeds payable on account of such damage or destruction so that the same shall be available to the Owner (subject to the terms of the Ground Lease and any mortgagee of the Hotel) as the Casualty Restoration progresses. The Owner shall commence the Casualty Restoration promptly after its receipt of such proceeds and shall complete the same with diligence.

**7.2      Termination After Substantial Insured Casualty.** The Owner and the Operator acknowledge that the Owner is subject to the provisions of the Ground Lease in connection with its obligation to repair or rebuild damage to or destruction of the Hotel and that in certain circumstances the Owner may elect not

to rebuild or repair damage to part or all of the Hotel. The Owner agrees to consult with the Operator in connection with any such decision and to give the Operator written notice of its final decision.

7.3 Proceeds of Business Interruption Insurance. The proceeds of any business interruption insurance shall be included in Gross Revenue for the Operating Year or the Operating Years for which such proceeds are payable.

## ARTICLE VIII

### EXPROPRIATION

#### 8.1 Expropriation Where Agreement Terminated.

- (a) In the event of expropriation of either the leasehold interest of, or a perpetual easement upon all of the Hotel, or a part thereof, and the part not so taken cannot be repaired, restored, replaced or rebuilt so as to constitute a First-Class Hotel facility, this Agreement shall terminate as of the Date of Expropriation.
- (b) If this Agreement terminates pursuant to paragraph (a) of this Section, the Operator shall have no interest in the compensation and damages awarded to the Owner; provided, however, that the Operator shall have the right to claim or recover from the expropriating authority, but not from the Owner, such amount as may be separately awarded or recoverable by the Operator for loss of income.

8.2 Expropriation Where Agreement not Terminated. In the event of expropriation of either the leasehold interest of, or a perpetual easement upon, less than all of the Hotel, and if this Agreement shall not have terminated pursuant to the provisions of Section 8.1, this Agreement shall remain in full force and effect with respect to the remainder of the Hotel, and, if any part of the Hotel shall have been taken, the Owner, to the extent of the proceeds of the expropriation received by it as its property absolutely, shall repair, restore, replace or rebuild the Hotel as nearly as possible to its value, condition and character immediately prior to the expropriation. The Owner shall commence such work promptly after receiving its award on account of the expropriation and shall complete the same with diligence.

8.3 Expropriation for Use. In the event of an expropriation of all or part of the Hotel for temporary use,



this Agreement shall remain in full force and effect, provided that:

- (a) if the expropriation is for a period not extending beyond the Term, the expropriation award (including any interest paid in respect thereof) less an amount to be determined by the Owner, acting reasonably, for the cost of restoration shall be included in Gross Revenue for the Operating Year or the Operating Years with respect to which it is paid. When and if during the Term the period of temporary use shall terminate, the Owner shall (to the extent of such awards paid to it as its absolute property, including any interest paid in respect thereof) effect all such restoration, repairs, and alterations as shall be necessary to restore the Hotel to its condition prior to such expropriation and shall complete the same with diligence.
- (b) if the expropriation is for a period extending beyond the Term, the expropriation awards (including any interest paid in respect thereof) for that portion of the period of the expropriation expiring on the expiration of the Term, less an amount to be determined by Owner, acting reasonably, to be set aside for the cost of restoration, shall be included in Gross Revenue for the Operating Year or Operating Years with respect to which it is paid; and the remainder (including interest as aforesaid) shall be paid to the Owner as their absolute property.

#### ARTICLE IX

##### TERMINATION OF THIS AGREEMENT

9.1 Events of Termination. If any one or more of the following events (hereinafter referred to as an "Event of Termination") shall occur:

- (a) if any party shall materially breach any covenant contained in, or shall default in the performance of any obligation under, this Agreement, and such breach or default remains uncured for thirty (30) days following notice thereof or the party in default has not commenced to cure and is not diligently proceeding therewith thirty (30) days following notice thereof; or
- (b) if any party shall apply for, or consent to, the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets or make a

general assignment for the benefit of its creditors, or file a voluntary petition in bankruptcy or a petition seeking reorganization, composition, arrangement with creditors, liquidation or similar relief under any present or future statute, law or regulation, or file any answer admitting the material allegations of a petition filed against it in any such proceeding, or be adjudicated as bankrupt or insolvent, or take any action looking toward dissolution; or

- (c) if any final order, judgment or decree (that is, an order, judgment or decree affirmed on appeal to a court of last resort or after the expiration of any period to appeal) shall be entered without the application, approval or consent of the affected party by any court of competent jurisdiction, approving a petition seeking reorganization, composition, arrangement with creditors, liquidation or similar relief under any present or future statute, law or regulation with respect to such party, or appointing a receiver, trustee or liquidator thereof of all or a substantial part of its assets and such order, judgment or decree shall continue unstayed and in effect of an aggregate of thirty (30) days; or
- (d) if a final judgment (that is a judgment affirmed on appeal to a court of last resort or after the expiration of any period to appeal) not covered by insurance, shall be rendered against either party, which, with other outstanding final judgments (defined as aforesaid) against such party not covered by insurance, exceed an aggregate of \$100,000 and such final judgment or judgments shall continue undischarged and unsettled for an aggregate of six (6) months (whether or not consecutive);

then, in any such event, the non-defaulting party may terminate this Agreement by giving notice to the defaulting party specifying a date, not earlier than five (5) days after the giving of such notice, when this Agreement shall terminate.

## 9.2 Owner's Right to Terminate.

- (a) The Owner may at any time upon not less than 45 days' notice to the Operator terminate this Agreement with effect as of the date stipulated in such notice.

9.3 Prorations on Termination, etc. Upon any termination of this Agreement pursuant to any provisions hereof or by order

Owner shall continue to be liable for its obligations hereunder. The Owner may also assign or transfer all or any part of its interest in the Hotel and in this Agreement to any other person or entity.

- (b) If the Owner or any successor thereof assigns or transfers its interest, or any part thereof, in the Hotel or this Agreement, all liabilities and obligations of the Owner under this Agreement accruing after such assignment or transfer shall continue notwithstanding such transfer or assignment.

10.3 Mortgage by the Owner. If the Owner mortgages or leases the Hotel, then the Owner shall cause the mortgagee or tenant to enter into an agreement with the Operator and the Operator shall enter into an agreement with any such mortgagee or tenant as follows:

- (a) the Operator shall, simultaneously with the giving to the Owner of any notice of default or notice of termination under Section 9.1, send a copy of such notice to the mortgagee or tenant in the manner provided for herein for the giving of notices, and no notice to the Owner of any default or termination hereunder shall be effective unless a copy of such notice shall have been sent as herein provided;
- (b) if a default by the Owner shall have occurred and be continuing so as to constitute an Event of Termination the Operator may not terminate this Agreement so long as any mortgagee or tenant, within fifteen (15) days after the Operator shall have given to such mortgages or tenant the notice provided in paragraph (a) above, shall cure such default respecting the payment of money or, for any other default in the performance by the Owner of any material obligation of the Owner under this Agreement, shall within such fifteen (15) day period, begin with diligence and good faith to cure such other default;
- (c) upon reasonable advance notice from any mortgagee or tenant, the Operator shall accord to such mortgagee or lessee and its agents the right to enter upon any part of the Hotel at any reasonable time during the term of this Agreement for the purpose of examining or inspecting or making extracts from the books and records of the Hotel; and
- (d) if the such mortgagee becomes the owner of the Hotel as a result of foreclosure or conveyance in lieu thereof or otherwise realizes upon its security and



enters into possession of the Hotel either directly or by its agent, this Agreement shall continue in accordance with its terms, such mortgagee shall be bound by this Agreement and the Operator shall recognize such mortgagee as Owner hereunder to the same extent as though it had been Owner hereunder as of the execution of this Agreement.

10.4 Estoppel Certificates. The Operator shall, at any time and from time to time, upon not less than thirty (30) days' prior notice by the Owner or any mortgagee of the Hotel, execute, acknowledge and deliver to the Owner or such mortgagee, a statement in writing certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating such facts as to this Agreement as the Owner or any such mortgagee shall reasonably require, and stating whether or not to the best knowledge of the signer of such certificate, there exists any default in the performance of any obligation contained in this Agreement, and, if so, specifying each such default of which the signer may have knowledge, it being intended that any such statement delivered pursuant hereto may be relied upon by the Owner and by any purchaser or mortgagee or prospective purchaser or mortgagee of the Hotel. The Operator, upon similar notice, shall be entitled to a similar certificate from the Owner.

## ARTICLE XI

### ARBITRATION

11.1 Arbitration of Disputes. All disputes arising between the parties hereto in respect of the provisions, the subject matter, the interpretation or the effect of this Agreement or as to any specific provision contained herein, the method for resolution for which is not otherwise provided for in this Agreement, and any disputes or other matters which under the provisions of this Agreement are to be referred to arbitration, shall be settled by arbitration in accordance with the provisions of Section 11.2.

11.2 Arbitration Procedure. Whenever any arbitration is permitted or required hereunder, arbitration proceedings shall be commenced by the party desiring arbitration (hereinafter individually or collectively called the "Initiating Party") giving notice to the other party (hereinafter called the "Responding Party") specifying the matter to be arbitrated and requesting an arbitration thereof. The Initiating Party and the Responding Party shall then designate or appoint a single arbitrator (hereinafter called the "arbitrator") for the purpose of arbitrating such matter. In the event that the parties are



unable to agree upon the selection of the arbitrator within three (3) business days after delivery of such notice, either party shall be entitled to make application to the Supreme Court of Ontario pursuant to the Arbitrations Act R.S.O. 1980, Chapter 25, as amended from time to time, for selection of a single arbitrator, and the provisions of the Arbitrations Act shall govern such selection.

The arbitrator shall thereupon proceed to hear the submissions of the parties, and shall render a decision within twenty-one (21) business days after the appointment of the arbitrator. The decision of the arbitrator shall be final and binding upon the parties and not subject to appeal. The arbitrator shall have the authority to assess the costs of the arbitrator against any one or both of the parties, provided, however, that each party shall bear its own witness and counsel fees.

## ARTICLE XII

### MISCELLANEOUS

12.1 Non Waiver of Breach, etc. No failure by the Operator or the Owner to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

12.2 Severability of Provisions. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, as the case may be, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.3 Notices. All notices, requests, demands and other communication required or permitted to be give under this Agreement shall be in writing and shall be deemed to have been duly given and to be effective if mailed three (3) business days after being deposited in the post as registered, postage prepaid, return receipt requested, addressed as follows and if delivered, on the date of delivery to the party at the following address:

(a) If to the Operator:

and:

(b) If to the Owner:

or at such other address in Canada as the party to whom the notice is sent shall have designated in accordance with the provisions of this Section.

12.4 Successors and Assignees. Subject to the provisions of Article X, this Agreement shall enure to the benefit of and shall be binding upon the successors and assigns of the parties hereto.

12.5 Entire Agreement. This Agreement shall constitute the entire agreement between the parties with respect to the Hotel and its management after the commencement of the Term.

12.6 Changes, Waiver, etc. Neither this Agreement nor any term or provision hereof may be changed, waived or discharged or terminated orally, but only by instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought.

12.7 No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be constituted to be or create a partnership or joint venture between the Owner and the Operator.

12.8 Approvals. Whenever any party hereto is requested hereunder to give its approval to any matter, such approval shall not be withheld or delayed unreasonably unless this Agreement otherwise expressly provides. If a party shall desire the approval of the other party hereto to any matter, such party shall give notice to such other party that it requests such approval, specifying in such notice the matter (in reasonable detail) as to which such approval is requested.

12.9 Force Majeure. If a party is prevented or delayed from performing any of the obligations on its part to be performed hereunder by reason of an act of God, strike, labour dispute, lockout, threat of imminent strike, fire, flood,

interruption or delay in transportation, war, insurrection or mob violence, requirement or regulation of government, or statute, unavoidable casualties, shortage of labour, equipment or materials, plant breakdown or failure of operation equipment or any other disabling cause (other than lack of funds), beyond the control of either party (provided that it has exercised reasonable foresight) or which cannot be overcome by the means normally employed in performance, then and in every such event, any such prevention or delay shall not be deemed a breach of this Agreement but performance of any of the said obligations or requirements shall be suspended during such period or disability and the period of all such delays resulting from any such causes required or permitted by either party to be done is to be done hereunder, it being understood and agreed that the time within which anything is to be done, or made pursuant hereto shall be extended by the total period of all such delays.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**LAKEVIEW DEVELOPMENT LTD.**

By: \_\_\_\_\_

By: \_\_\_\_\_ c/s

**GGG HOTEL HOLDINGS CANADA INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_ c/s

**127089 ONTARIO LTD.**

By: \_\_\_\_\_

By: \_\_\_\_\_ c/s

WDM^MANAGRGG:VWRE





ASSIGNMENT OF GROUND LEASE

THIS AGREEMENT made as of and effective from the 31st day of March, 1989.

B E T W E E N :

LAKEVIEW DEVELOPMENT LTD.,

(hereinafter referred to as the "Assignor")

OF THE FIRST PART,

- and -

GGG HOTEL HOLDINGS CANADA INC.,

(hereinafter referred to as the "Assignee")

OF THE SECOND PART,

- and -

THE CORPORATION OF THE CITY OF HAMILTON,

(hereinafter referred to as the "Lessor")

OF THE THIRD PART,

WHEREAS by a Ground Lease dated the 3rd day of May, 1983 and registered in the Land Registry Office for the Registry Division of Wentworth (No. 62) on the 31st day of January, 1984 as Instrument Number 271066 C.D. amended by certain agreements including, by agreement dated May 3, 1983 registered September 17, 1984 as Instrument No. 292838 C.D. and by agreement dated July 29, 1983 registered September 17, 1984 as Instrument No. 292840 and by agreement dated March 31, 1989 registered on the \* day of \*, 1989, as Instrument No. \* (the "Lease"), the Lessor leased to the Assignor as lessee, certain premises (the "Leased Premises") in the City of Hamilton, in the Province of Ontario and described in the Lease and in Schedule "A" attached hereto for and during a term (the "Term") of eighty-six (86) years, five (5) months and twenty-eight (28) days, commencing on the 3rd day of May, 1983 and expiring on the 31st day of October, 2069;

AND WHEREAS the Lease contains a covenant on the part of the lessee ("Lessee") not to assign the Lease or sublet the Leased Premises without the consent of the Lessor;

AND WHEREAS the Assignor has agreed to assign the Lease to the Assignee subject to obtaining the consent of the Lessor to such assignment;

AND WHEREAS the Assignor has applied to the Lessor for the consent of the Lessor to assign the Lease to the Assignee, subject to and upon the conditions herein set out;

AND WHEREAS the Lessor has agreed to grant its consent to the within assignment as of the 31st day of March, 1989 (the "Effective Date") subject to the terms and conditions herein set out;

AND WHEREAS GGS Co. Ltd. (the "Guarantor") has agreed to execute the indemnity agreement attached hereto as Schedule "B" for the purpose of acknowledging the Guarantor's agreement to indemnify and save the Lessor harmless from and against non-payment of rent and any non-observance or non-performance of any of the other terms, covenants and conditions contained in the Lease to be observed and performed on the part of the Lessee therein;

NOW THEREFORE in consideration of the mutual covenants and agreements between the parties to this Agreement and the sum of One Dollar (\$1.00) that has been paid by each of the parties to each of the others, the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

1. The Assignor hereby transfers, sets over and assigns unto the Assignee, as of and from the Effective Date, all of its right, title and interest in the Lease and the Leased Premises including the unexpired residue of the term of the Lease and all benefits to be derived thereunder.

To have and to hold the same unto the Assignee, subject to the payment of the rent and such other amounts as may hereafter become due and payable under the terms of the Lease and the observance and performance of the covenants of the Lessee and conditions contained in the Lease.

2. The Assignor covenants and agrees with the Assignee that:

- (a) The Lease is a good, valid and subsisting Lease in full force and effect, the rent thereby reserved has been duly paid up to the Effective Date, and the Assignor is not in default under any of the covenants, terms and conditions therein contained as of the Effective Date;
- (b) The Assignor has good right, full power and absolute authority to assign the Leased Premises and the Lease in the manner aforesaid, according to the true intent and meaning of this Agreement, free and clear of all liens, mortgages, charges and encumbrances, except for such permitted encumbrances as are set out in Schedule "C" attached hereto or as may be accepted from time to time by the Assignee, and subject to receipt of certain approvals, including the approval of the Lessor, which have been or shall be obtained prior to the Effective Date hereof;
- (c) Subject to the payment of rent and to the observance and performance of the terms, conditions contained in the Lease on the part of the Lessee therein to be observed and performed, and subject to the terms and conditions of the Lease, the Assignee may enter into and upon and hold and have quiet enjoyment of the Leased Premises for the residue of the Term granted by the Lease for its own use and benefit without any interruption by the Assignor or by any person whomsoever claiming through or under the Assignor;

- (d) The Assignor will from time to time hereafter, at the request and cost of the Assignee, promptly execute such further assurances of the assignment of the Lease as the Assignee may reasonably require;
- (e) The Assignor will indemnify and save harmless the Assignee from all actions, suits, costs, losses, charges, demands and expenses in respect of any non-payment of any amount payable under the Lease or any non-observance or non-performance of any covenant in the Lease by the Assignor prior to the Effective Date.

3. The Assignee covenants with the Assignor that:

- (a) It will at all times during the balance of the Term of the Lease pay the rent and all other amounts required to be paid by the Assignor in its capacity as "Lessee", under the Lease and observe and perform the terms, covenants and conditions contained in the Lease on the part of Assignor in its capacity as "Lessee" therein, to be observed and performed, including, without limitation, the provisions of the Lease relating to the permitted use of the Leased Premises; and
- (b) It will indemnify and save harmless the Assignor from all actions, suits, costs, losses, charges, demands and expenses incurred or suffered by the Assignor as a direct or indirect result of any breach by the Assignee of the covenant provided for in paragraph 3(a) above, or any breach by the Assignee of any term of the Lease, or any failure or refusal to pay any rent or any other amount, or any failure or refusal to observe, perform and comply with the terms of the Lease.

4. The Assignee hereby covenants and agrees with the Lessor that it will at all times from and after the Effective Date during the balance of the Term of the Lease pay the rent reserved by the Lease and all other payments covenanted to be paid by the Lessee therein at the times and in the manner provided for in the Lease, and will observe and perform all of the terms, covenants and conditions contained in the Lease on the part of the Lessee therein to be observed and performed as and when the same are required to be observed and performed as provided by the Lease, including, without limitation, the provisions of the Lease relating to the permitted use of the Leased Premises.

5. The Assignee acknowledges that it has received a copy of the executed Lease and is familiar with the terms, covenants and conditions contained therein.

6. The Lessor consents to this assignment of the Lease from the Assignor to the Assignee as of and from the Effective Date upon and subject to the following terms and conditions:

- (a) This consent does not in any way derogate from the rights of the Lessor under the Lease nor operate to release the Assignor from its obligation to pay rent from time to time becoming due under the Lease and from the non-observance or non-performance of all of the terms, covenants



and conditions contained in the Lease on the part of the Lessee therein to be observed and performed (and the Lessor's rights and remedies arising as a result of any such non-performance or non-observance) all subject to the terms of the Lease and notwithstanding the within assignment (or any disaffirmance or disclaimer of the within assignment), the Assignor shall remain liable during the balance of the Term of the Lease for the observance and performance of all the terms, covenants and conditions contained in the Lease.

- (b) Notwithstanding any variations in the Lease, the Assignor hereby waives any right it may have to obtain the benefit of surety or similar equitable principles which might affect its liability as hereinbefore referred to;
- (c) This consent does not constitute a waiver of the necessity for consent to any further transfer, assignment, sublease, mortgaging or encumbering of the Lease or the Leased Premises or the parting with or sharing possession of all or any part of the Leased Premises by the Assignee. If the Assignee proposes to effect a further transfer, assignment, sublease, mortgage or encumbrance of the Lease or Leased Premises, the terms of the Lease and this Agreement shall apply and must be observed. For the purpose of this provision, any transfer, or issue by sale, bequest, inheritance, operation of law or other disposition or by subscription from time to time of all or any part of the corporate shares of the Assignee which results, in the Lessor's opinion, in any change in the present effective voting control of the Assignee, shall be deemed to be a transfer within the meaning of this Agreement, and the transferee shall be deemed to be the party or parties who acquire the said shares and the provisions herein regarding any transfer and transferee shall apply mutatis mutandis thereto.
- (d) By giving its consent pursuant to this Agreement, the Lessor does not hereby acknowledge or approve of any of the terms of this Agreement as between the Assignor and Assignee nor does the Lessor acknowledge or approve thereby of any other agreement between the Assignor and the Assignee, except for the assignment itself;
- (e) The Assignor and the Assignee shall, at their expense, promptly execute such further documentation with respect to Leased Premises as the Lessor reasonably requires from time to time;
- (f) The Assignee shall from and after the Effective Date maintain the insurance which the Lessee is required to take out pursuant to the Lease.
- (g) The Assignor agrees to maintain in force its insurance as required by the Lease until the Lessor has received the evidence of insurance required by section 6(f) hereof;

(h) The Assignee acknowledges and agrees that:

- (i) it is accepting possession of the Leased Premises in an "as is" condition as of the Effective Date;
  - (ii) the Lessor has no responsibility or liability for making any renovations, alterations, repairs, improvements in or to the Leased Premises;
  - (iii) all further renovations, alterations, repairs, improvements in or to the Leased Premises including without limitation those set out in Schedule "D" hereto, shall involve no cost or expense to the City and shall be completed strictly in accordance with the provisions of the Lease as may be amended from time to time;
  - (iv) in accordance with the requirements of section 4 of the Lease, the Assignee agrees that this assignment is subject to the Lessor's absolute right of property in the Improvements as defined in the Lease, with this right of the Lessor, effective upon the termination of the Lease and being in priority to any other interest in the Improvements which may now exist or hereafter be created or acquired by the Lessee or the Assignee and that all dealings by the Lessee or the Assignee which in any way affect the title of the Improvements shall be made expressly subject to the Lessor's absolute right of property in the Improvements;
  - (v) in the event of termination of the Lease in accordance with the provisions thereof, the rights of the Assignee shall terminate automatically in accordance with the provisions of the Lease;
  - (vi) It shall not mortgage its leasehold interest nor agree to mortgage its leasehold interest unless it has obtained the consent of the Lessor and the mortgagee has executed an agreement with the Lessor pursuant to section 16.01 of the Lease in the form required by the Lease. Any mortgage in contravention of this provision shall be null and void;
  - (vii) the provision in section 22.09 of the Lease indicating that the Lessor will honour the Hotel Agreement, does not and shall not be interpreted as imposing any financial liability whatsoever on the Lessor;
- (I) This assignment of the Lease is deemed not to have been delivered to the Assignee by the Assignor until the consent of the Lessor has been evidenced by the execution of this Agreement by the Lessor and the delivery thereof to both the Assignor and the Assignee.

7. (a) The Lessor confirms and acknowledges that the Lease is valid, in good standing and in full force and effect, unchanged and unmodified except in accordance with this Agreement. It is understood and agreed that all terms and expressions when used in this Agreement have the same meaning as they have in the Lease; and
- (b) The Lessee, Assignor and Assignee do in all other respects hereby confirm that the Lease is in full force and effect, unchanged and unmodified except in accordance with the Agreement. It is understood and agreed that all terms and expressions when used in this Agreement have the same meaning as they have in the Lease.
8. The Lessor acknowledges that it is holding a Letter of Credit in respect of a prepayment of rent received by the Assignor pursuant to a Sublease registered as Instrument No. \*. The Lessor agrees to return this Letter of Credit after a good and valid surrender of the Sublease is registered on title to the Leased Premises.
9. This Agreement shall be interpreted under and governed by the laws of the Province of Ontario.
10. The parties hereto do hereby agree that the address for service of the Lessee under Section 21.01 of the Lease shall be amended to include the address for service of the Assignee, by inserting the following immediately prior to the second sentence in section 21.01:
- With a copy to be delivered addressed to the attention of an officer of  
GGS Hotel Holdings Canada Inc. at:
- Messrs. McMillan, Binch  
P.O. Box 38, South Tower  
Royal Bank Plaza  
Toronto, Ontario M5J 2J7
- Attention: Mr. David McCordie
11. The Assignee shall not be entitled to assign, sublet, transfer, mortgage, encumber or convey its interest in the Lease or the Leased Premises or any part thereof unless the Assignee shall have obtained the consent of the Lessor thereto, pursuant to and as more fully set out in the Lease as amended from time to time and the assignee, sublessee or transferee has executed an assumption agreement in registrable form with the Lessor in the form attached hereto as Schedule "E" whereby the assignee, sublessee or transferee agrees to be bound by the provisions of the Lease as amended hereby. Any assignment, sublet, transfer or conveyance in contravention of this provision shall be null and void.
12. The parties hereto hereby acknowledge, confirm and agree that the recitals above are true and form part of this Agreement.

13. This Agreement shall enure to the benefit of and shall be binding upon the Assignor, the Assignee, the Lessor, and their permitted successors and permitted assigns, respectively.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the day and year first above written by affixing their respective corporate seals under the hands of their proper signing officers duly authorized in that behalf.

**LAKEVIEW DEVELOPMENT LTD.**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**GGH HOTEL HOLDINGS CANADA INC.**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**THE CORPORATION OF THE CITY OF  
HAMILTON**

Per: \_\_\_\_\_

Per: \_\_\_\_\_





RELEASE AGREEMENT

THIS AGREEMENT dated <sup>as amended</sup> the 12th day of May, 1986.

BETWEEN:

CITIBANK CANADA,  
a Canadian Chartered Bank, having its  
head office at the City of Toronto, in the  
Province of Ontario,  
(hereinafter called the "Bank").

- and -

THE CORPORATION OF THE CITY OF HAMILTON,  
a municipal corporation,  
(hereinafter called the "City").

- and -

LAKEVIEW DEVELOPMENT LTD.,  
a corporation continued under the laws of Canada  
(hereinafter called "Lakeview").

WHEREAS the Bank, the City and Lakeview entered into an agreement (the "Citibank Agreement") dated November 1, 1984, (a true copy of which is attached hereto as Schedule "B") setting out certain rights and obligations among the parties thereto respecting, inter alia, the Ground Lease (registered as No.271066 C.D.) and the Development Agreement (registered as 292836 C.D.);

AND WHEREAS the terms and conditions of the Citibank Agreement (sec.6.07) provide that the rights and obligations of the Bank thereunder shall cease at such time as the Bank has been repaid in full for any monies advanced by the Bank to Lakeview with accrued interest thereon and all other costs, as defined in the Loan Agreement;

AND WHEREAS Lakeview has repaid, in full, to the Bank all monies advanced by the Bank to Lakeview with accrued interest thereon and all other costs, and the Bank has given to Lakeview a Cessation of Charge 153990 L.T. made by Lakeview to the Bank and the Cessation has been registered as 163664 L.T. on August 26, 1985;



*gjk*

1. Lakeview and the City agree that Schedule "C" of the Development Agreement registered as Instrument No. 292836 C.D. is hereby amended by deleting paragraph (b) and substituting the following:

"Competition between facilities of the Hotel and the Convention Centre is to be avoided. However, it is recognized that the Hotel must be competitive with other hotels and consequently, if necessary (while preference will be given to a smaller facility), banquet facilities will be permitted in the Hotel, provided that their combined total seating capacity shall not be in excess of 750 seats with the largest banquet room having a maximum seating capacity of 500 seats."

2. Time shall remain of the essence of the Development Agreement amended by paragraph one of this Agreement.

3. Lakeview acknowledges:

- (a) that under sec.6.03 of the Ground Lease, Lakeview is required to obtain the written approval of the City prior to commencing alterations as defined therein.
- (b) that under sec.6.07 of the Ground Lease, Lakeview is required to comply with all provincial and municipal fire, safety, health and construction standards and regulations with respect to any of Lakeview's alterations or expansions;

4. This Agreement shall be registered by Lakeview on the Schedule "A" leasehold land forthwith after the execution of this Agreement by all of the parties.

5. (a) This Agreement is subject to the approval of:

- (i) the Ontario Provincial Minister of Municipal Affairs and Housing; and,
- (ii) Canada Mortgage and Housing Corporation.

- (b) The City will apply for the approvals set out in paragraph 5(a) and take all necessary steps for such applications. Lakeview agrees to co-operate in the obtaining of such approvals.

IN WITNESS WHEREOF the parties have hereunto caused to be affixed their respective corporate seals attested by the signatures of their respective proper officers duly authorized in that behalf.

THE CORPORATION OF THE CITY OF HAMILTON

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

LAKEVIEW DEVELOPMENT LTD.

\_\_\_\_\_  
*L. Laro*  
\_\_\_\_\_  
*L. Laro*

SCHEDULE "B"

Indemnity Agreement

THIS AGREEMENT made as of and effective from the 31st day of March, 1989

B E T W E E N :

THE CORPORATION OF THE CITY OF HAMILTON

(hereinafter referred to as the "Lessor")

OF THE FIRST PART

- and -

GGG CO. LTD.

(hereinafter referred to as "Indemnifier")

OF THE SECOND PART

In order to induce the Lessor to enter into an Assignment of Ground Lease (the "Agreement") a copy of which is attached hereto, dated as of and effective from the 31st day of March, 1989, and made between Lakeview Development Ltd., as Assignor and GGS Hotels Canada Inc. as Assignee, with respect to a certain lease (the "Lease") dated the 3rd day of May, 1983, and made between Lessor, as lessor, and Lakeview Development Ltd., as lessee (as more particularly described in the Agreement), and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Indemnifier hereby makes the following indemnity and agreement (the "Indemnity") with and in favour of the Lessor:

1. The Indemnifier hereby agrees with the Lessor that at all times during the Term of the Lease and any extension or renewal of the Lease (the Lease and the Agreement being herein referred to as the "Lease") it will:

- (a) make the due and punctual payment of all Rent, monies, charges and other amounts of any kind whatsoever payable under the Lease by the Lessee whether to the Lessor or otherwise and whether the Lease has been disaffirmed or disclaimed;
- (b) effect prompt and complete performance of all and singular the terms, covenants and conditions contained in the Lease on the part of the Lessee to be kept, observed and performed; and,
- (c) indemnify and save the Lessor harmless from any loss, costs, claims, demands, or damages arising out of any failure by the Lessee to pay the aforesaid Rent, monies, charges or other amounts due under the Lease or resulting from any failure by the Lessee to observe or perform any of the terms, covenants and conditions contained in the Lease.

2. This Indemnity is absolute and unconditional and the obligations of the Indemnifier shall not be released, discharged, mitigated, impaired or affected by:

- (a) any extension of time, indulgences or modifications which the Lessor extends to or makes with the Lessee in respect of the performance of any of the obligations of the Lessee under the Lease;



- (b) any waiver by or failure of the Lessor to enforce any of the terms, covenants or conditions contained in the Lease;
- (c) any assignment of the Lease by the Assignee or by any trustee, receiver or liquidator;
- (d) any consent which the Lessor has given to the Agreement or to any subletting;
- (e) any amendment to the Lease or any waiver by the Lessee of any of its rights under the Lease;
- (f) the expiration of the Term; or,
- (g) any limitation on recovery or otherwise imposed on the Lessor, including without limitation under section 22.13 of the Lease whereunder any recovery by the Lessor is limited to the Leased Premises, with the Lessor to be entitled to recover against all of the assets of the Indemnifier in addition to the interest in the Leased Premises of the Assignee.

3. The Indemnifier hereby expressly waives notice of the acceptance of this Agreement and all notice of non-performance, non-payment or non-observance on the part of the Lessee of the terms, covenants and conditions contained in the Lease. Without limiting the generality of the foregoing, any notice which the Lessor desires to give to the Indemnifier shall be sufficiently given if delivered or if mailed by prepaid registered or certified post addressed to the Indemnifier at the Leased Premises, and every such notice is deemed to have been given upon the day it was so delivered or if mailed, seventy-two (72) hours after it was mailed. The Indemnifier may designate by notice in writing a substitute address in Ontario for that set forth above and thereafter notices shall be directed to such substitute address.

4. In the event of a default under the Lease or under this Indemnity, the Indemnifier waives any right to require the Lessor to:

- (a) proceed against the Assignor or the Lessee or pursue any rights or remedies against the Assignor or the Lessee with respect to the Lease;
- (b) proceed against or exhaust any security of the Assignor or the Lessee held by the Lessor; or
- (c) pursue any other remedy whatsoever in the Lessor's power. The Lessor has the right to enforce this indemnity regardless of the acceptance of additional security from the Assignor or Lessee and regardless of any release or discharge of the Assignor or Lessee by the Lessor or by others or by operation of any law.

5. Without limiting the generality of the foregoing, the liability of the Indemnifier under this Indemnity is not and is not deemed to have been waived, released, discharged, impaired or affected by reason of the release or discharge of the Assignor or Assignee in any receivership, bankruptcy, winding up or other creditors' proceedings or the rejection, disaffirmance or disclaimer of the Lease in any proceeding and shall continue with respect to the periods prior thereto and thereafter, for and with respect to the Term as if the Lease had not been disaffirmed or disclaimed, and in furtherance hereof, the Indemnifier agrees, upon any such disaffirmance or disclaimer, that the Indemnifier shall, at the option of the Lessor, become the lessee of the Lessor upon the same terms and conditions as are contained in the Lease, applied mutatis mutandis. The liability of the Indemnifier shall not be affected by any repossession of the Leased Premises by the Lessor, provided, however, that the net payments received by the Lessor after deducting all costs and expenses of repossessing and reletting the Leased Premises

shall be credited from time to time by the Lessor against the indebtedness of the Indemnifier hereunder and the Indemnifier shall pay any balance owing to the Lessor from time to time immediately upon demand.

6. No action or proceedings brought or instituted under this Indemnity and no recovery in pursuance thereof shall be a bar or defence to any further action or proceeding which may be brought under this Indemnity by reason of any further default hereunder or in the performance and observance of the terms, covenants and conditions contained in the Lease.

7. No modification of this Indemnity shall be effective unless the same is in writing and is executed by both the Indemnifier and the Lessor.

8. The Indemnifier shall, without limiting the generality of the foregoing, be bound by this Indemnity in the same manner as though the Indemnifier were the Lessee named in the Lease.

9. All the terms, covenants and conditions of this Indemnity extend to and are binding upon the Indemnifier, its administrators, successors and assigns, and enure to the benefit of and may be enforced by the Lessor, its successors and assigns, as the case may be.

10. The expressions "Lessor", "Lessee", "Rent", "Term", and "Leased Premises" and other terms or expressions where used in this Indemnity, respectively, have the same meaning as in the Lease.

11. This Agreement shall be construed in accordance with the laws of the Province of Ontario.

12. Wherever in this Indemnity reference is made to the Lessor, the Lessee or the Assignee, the reference is deemed to apply also to the respective administrators, successors and assigns and permitted assigns, respectively, of the Lessor, the Lessee and the Assignee, as the case may be. Any assignment by the Lessor of any of its interest in the Lease operates automatically as an assignment to such assignee of the benefit of this Indemnity.

IN WITNESS WHEREOF the Lessor and the Indemnifier have signed and sealed this Indemnity.

SIGNED, SEALED AND DELIVERED

in the presence of:

Witness

THE CORPORATION OF THE CITY OF  
HAMILTON

Per: \_\_\_\_\_

GGG CO. LTD.

Per: \_\_\_\_\_



SCHEDULE "C"

(Attached to and forming part of the TRANSFER OF EASEMENT dated November 29, 1985 entered into among THE CORPORATION OF THE CITY OF HAMILTON, LAKEVIEW DEVELOPMENT LTD. and

THIS TRANSFER OF EASEMENT made as of the 29th day of November, 1985.

B E T W E E N :

\*  
(hereinafter called the "Successor")

OF THE FIRST PART

- and -

LAKEVIEW DEVELOPMENT LTD. and LAKEVIEW  
DEVELOPMENT LTD. & KING STREET HAMILTON  
HOTEL LIMITED PARTNERSHIP

(hereinafter called "Lakeview")

OF THE SECOND PART

- and -

THE CORPORATION OF THE CITY OF HAMILTON

(hereinafter called the "City")

OF THE THIRD PART

WITNESSETH THAT:

WHEREAS by a Ground Lease dated as of the 3rd day of May, 1983 wherein Lakeview Development Ltd. (hereinafter called "Lakeview") is the lessee and the City is the lessor, the City did demise and lease unto Lakeview the land therein described, which land (hereinafter called the "Leasehold Land") is described in Schedule "A" attached hereto, for and during the term of years to be computed from and inclusive of the 3rd day of May, 1983 and fully to be complete and ended on the 31st day of October, 2069 at and under the yearly rental, covenants, conditions and agreements expressed and declared in the Ground Lease which lease was registered as Instrument No. 271066 C.D.;

AND WHEREAS by the Transfer of Easement dated November 29, 1985, Lakeview did grant to the City the right, interest and easement in the Schedule "A" Leasehold Land to construct, maintain and operate a climate controlled pedestrian bridge above King Street West, Hamilton, to connect the Plaza Level of the Hotel and adjacent L. D. Jackson Square facilities and premises with the City's Convention Centre and related facilities lying South of King Street West (hereinafter this Agreement shall be referred to as the "Transfer of Easement");

AND WHEREAS it is a term of the Transfer of Easement that Lakeview shall not sell, transfer or assign any of its leasehold interest in the Schedule "A" Leasehold Land without first requiring any such purchaser or assignee to enter into this Agreement with the City.

AND WHEREAS Lakeview has assigned to the Successor its interest in the Ground Lease and Leasehold Land by an Assignment of Lease (herein the "Contract") registered as Instrument No. ;



NOW THEREFORE in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration paid by the City to each of the other parties hereto (the receipt and sufficiency whereof being hereby acknowledged), the parties hereto acknowledge, covenant and agree as follows:

1. (a) The Successor and Lakeview agree with each other and covenant to the City that the Contract is expressly subject to the rights of the City under the Transfer of Easement and to the obligations of Lakeview under the Transfer of Easement.
- (b) The Successor hereby undertakes, covenants, promises and agrees to Lakeview and to the City that the Successor shall perform and abide by and be bound by at all times, all of the terms, covenants and conditions and obligations on the part of Lakeview contained in the Transfer of Easement and that the City shall be entitled to all remedies in respect of breaches of covenants and conditions as if the Successor were named in the Transfer of Easement.
- (c) The Successor shall at all times comply with the terms, provisions and conditions of the Transfer of Easement and do all such acts, matters and things as may be requisite and necessary to maintain the Transfer of Easement in good standing at all times and, without limiting the generality of the foregoing, it is further acknowledged and agreed by Lakeview and the Successor that the obligations of Lakeview under the Contract shall be subject always to Lakeview's obligation under the Transfer of Easement not to do or allow to be done any act or omission or other matter or thing which shall constitute or be deemed to constitute a default under the Transfer of Easement.
- (d) Lakeview and the Successor hereby covenant with each other that the Contract between them is subject to an obligation and covenant between them not to do or allow to be done any act or omission or other matter or thing which shall constitute or be deemed to constitute a default under the Transfer of Easement and covenant further to do all such acts, matters and things as may be requisite and necessary to maintain the Transfer of Easement in good standing at all times.
- (e) Lakeview and the Successor hereby acknowledge and agree that wherever and whenever a conflict shall arise between the rights of the City under the Transfer of Easement and the provisions of the Contract, the rights of the City shall prevail.
- (f) This Agreement shall be registered by the Successor in the Land Registry Office against Lakeview's Leasehold Land described in Schedule "A" forthwith after its execution.
- (g) This Agreement is entered into and delivered to the City as required by the Transfer of Easement. It only fulfills the obligation of the Successor named herein. Other parties subsequent in interest to

Lakeview including the assigns of the Successor are required to enter into their own Agreement with the City.

- (h) This Agreement to the City shall in no way affect or release Lakeview from its liabilities and responsibilities under the terms of the Transfer of Easement and Lakeview covenants and agrees with the City that it shall remain responsible for all of such liabilities and responsibilities notwithstanding this Agreement nor the Contract. By joining in this Agreement, the City does not thereby acknowledge or approve of any of the terms of the Contract between Lakeview and the Successor.

2. (a) Any notice in writing required or permitted to be given to Lakeview hereunder shall be given by registered mail, postage prepaid, addressed to:

Lakeview Development Ltd. and  
King Street Hamilton Hotel Limited Partnership  
6th Floor, 185 Carlton Street  
Winnipeg, Manitoba  
R3C 3J1

with copy sent contemporaneously to:

McJannet, Weinberg, Rich  
Barristers & Solicitors  
5th Floor  
185 Carlton Street  
Winnipeg, Manitoba  
R3C 3J1

Attention: Mr. J. T. McJannet, Q.C.

- (b) Any notice in writing required or permitted to be given to the Successor hereunder shall be given by registered mail, postage prepaid, addressed to:

GGH Holdings Canada Inc.  
c/o Messrs. McMillan, Binch  
Barristers & Solicitors

Attention: Mr. David McCordie

- (c) Any notice in writing required or permitted to be given to the City shall be given by registered mail, postage prepaid, addressed to:

The City Clerk  
The Corporation of the City of Hamilton  
City Hall  
71 Main Street West  
P.O. Box 2040  
Hamilton, Ontario  
L8N 3T4

- (d) Any such notice mailed as aforesaid shall be deemed to have been given to the recipient on the fifth business day following the date of such mailing.

(e) Any party may at any time give notice to each of the other parties of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified so long as it is within the Province of Ontario shall be deemed to be the address of such party.

3. The Successor hereby agrees to indemnify and save Lakeview harmless from any and all actions, suits, losses, charges, demands, liabilities and expenses incurred or suffered by Lakeview as a direct or indirect result of any failure or refusal by the Successor to perform and abide by all of the terms, covenants, conditions and obligations on the part of Lakeview contained in the Transfer of Easement or any breach by the Successor of the terms of the Transfer of Easement or of the terms hereof.

4. Each of the parties hereto covenants and agrees with the others of them to do all such acts, matters and things as may be requisite and necessary to give full force and effect to the provisions of this Agreement and to carry out and perform the same in accordance with its terms.

5. This Agreement may be executed in several counterparts each of which when executed shall be deemed to be an original and such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have duly executed these present.

**LAKEVIEW DEVELOPMENT LTD.**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**KING STREET HAMILTON HOTEL LIMITED  
PARTNERSHIP**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**THE CORPORATION OF THE CITY OF  
HAMILTON**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Successor

**SCHEDULE "C"**

(Attached to and forming part of the PEDESTRIAN BRIDGE AGREEMENT dated March 28, 1985 entered into among THE CORPORATION OF THE CITY OF HAMILTON, LAKEVIEW DEVELOPMENT LTD. and

THIS AGREEMENT made as of the                      day of                      , 1989.

**B E T W E E N :**

**GGs HOTEL HOLDINGS CANADA INC.**

(hereinafter called the "Successor")

OF THE FIRST PART

- and -

**LAKEVIEW DEVELOPMENT LTD. and LAKEVIEW  
DEVELOPMENT LTD. & KING STREET HAMILTON  
HOTEL LIMITED PARTNERSHIP**

(hereinafter called "Lakeview")

OF THE SECOND PART

- and -

**THE CORPORATION OF THE CITY OF HAMILTON**

(hereinafter called the "City")

OF THE THIRD PART

**WITNESSETH THAT:**

**WHEREAS** by a Ground Lease dated as of the 3rd day of May, 1983 wherein Lakeview Development Ltd. (hereinafter called "Lakeview") is the lessee and the City is the lessor, the City did demise and lease unto Lakeview the land therein described, which land (hereinafter called the "Leasehold Land") is described in Schedule "A" attached hereto, for and during the term of years to be computed from and inclusive of the 3rd day of May, 1983 and fully to be complete and ended on the 31st day of October, 2069 at and under the yearly rental, covenants, conditions and agreements expressed and declared in the Ground Lease which lease was registered as Instrument No. 271066 C.D.;

**AND WHEREAS** by the Pedestrian Bridge Agreement dated March 28, 1985, Lakeview did grant to the City the right, interest and easement in the Schedule "A" Leasehold Land to construct, maintain and operate a climate controlled pedestrian bridge above King Street West, Hamilton, to connect the Plaza Level of the Hotel and adjacent L. D. Jackson Square facilities and premises with the City's Convention Centre and related facilities lying South of King Street West (hereinafter this Agreement shall be referred to as the "Bridge Agreement");

**AND WHEREAS** it is a term of the Bridge Agreement that Lakeview shall not sell, transfer or assign any of its leasehold interest in the Schedule "A" Leasehold Land without first requiring any such purchaser or assignee to enter into this Agreement with the City.

**AND WHEREAS** Lakeview has assigned to the Successor its interest in the Ground Lease and Leasehold Land by an Assignment of Lease (herein the "Contract") registered as Instrument No.                      ;

**NOW THEREFORE** in consideration of the sum of Five (\$5.00) Dollars and



other good and valuable consideration paid by the City to each of the other parties hereto (the receipt and sufficiency whereof being hereby acknowledged), the parties hereto acknowledge, covenant and agree as follows:

1. (a) The Successor and Lakeview agree with each other and covenant to the City that the Contract is expressly subject to the rights of the City under the Bridge Agreement and to the obligations of Lakeview under the Bridge Agreement.
- (b) The Successor hereby undertakes, covenants, promises and agrees to Lakeview and to the City that the Successor shall perform and abide by and be bound by at all times, all of the terms, covenants and conditions and obligations on the part of Lakeview contained in the Bridge Agreement and that the City shall be entitled to all remedies in respect of breaches of covenants and conditions as if the Successor were named in the Bridge Agreement.
- (c) The Successor shall at all times comply with the terms, provisions and conditions of the Bridge Agreement and do all such acts, matters and things as may be requisite and necessary to maintain the Bridge Agreement in good standing at all times and, without limiting the generality of the foregoing, it is further acknowledged and agreed by Lakeview and the Successor that the obligations of Lakeview under the Contract shall be subject always to Lakeview's obligation under the Bridge Agreement not to do or allow to be done any act or omission or other matter or thing which shall constitute or be deemed to constitute a default under the Bridge Agreement.
- (d) Lakeview and the Successor hereby covenant with each other that the Contract between them is subject to an obligation and covenant between them not to do or allow to be done any act or omission or other matter or thing which shall constitute or be deemed to constitute a default under the Bridge Agreement and covenant further to do all such acts, matters and things as may be requisite and necessary to maintain the Bridge Agreement in good standing at all times.
- (e) Lakeview and the Successor hereby acknowledge and agree that wherever and whenever a conflict shall arise between the rights of the City under the Bridge Agreement and the provisions of the Contract, the rights of the City shall prevail.
- (f) This Agreement shall be registered by the Successor in the Land Registry Office against Lakeview's Leasehold Land described in Schedule "A" forthwith after its execution.
- (g) This Agreement is entered into and delivered to the City as required by the Bridge Agreement. It only fulfills the obligation of the Successor named herein. Other parties subsequent in interest to Lakeview including the assigns of the Successor are required to enter into their

own Agreement with the City.

- (h) This Agreement to the City shall in no way affect or release Lakeview from its liabilities and responsibilities under the terms of the Bridge Agreement and Lakeview covenants and agrees with the City that it shall remain responsible for all of such liabilities and responsibilities notwithstanding this Agreement nor the Contract. By joining in this Agreement, the City does not thereby acknowledge or approve of any of the terms of the Contract between Lakeview and the Successor.
2. (a) Any notice in writing required or permitted to be given to Lakeview hereunder shall be given by registered mail, postage prepaid, addressed to:

Lakeview Development Ltd. and  
King Street Hamilton Hotel Limited Partnership  
6th Floor, 185 Carlton Street  
Winnipeg, Manitoba  
R3C 3J1

with copy sent contemporaneously to:

McJannet, Weinberg, Rich  
Barristers & Solicitors  
5th Floor  
185 Carlton Street  
Winnipeg, Manitoba  
R3C 3J1

Attention: Mr. J. T. McJannet, Q.C.

- (b) Any notice in writing required or permitted to be given to the Successor hereunder shall be given by registered mail, postage prepaid, addressed to:

GGH Holdings Canada Inc.  
c/o Messrs. McMillan, Binch  
Barristers & Solicitors

Attention: Mr. David McCordie

- (c) Any notice in writing required or permitted to be given to the City shall be given by registered mail, postage prepaid, addressed to:

The City Clerk  
The Corporation of the City of Hamilton  
City Hall  
71 Main Street West  
P.O. Box 2040  
Hamilton, Ontario  
L8N 3T4

- (d) Any such notice mailed as aforesaid shall be deemed to have been given to the recipient on the fifth business day following the date of such mailing.

- (e) Any party may at any time give notice to each of the other parties of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified so long as it is within the Province of Ontario shall be deemed to be the address of such party.

3. The Successor hereby agrees to indemnify and save Lakeview harmless from any and all actions, suits, losses, charges, demands, liabilities and expenses incurred or suffered by Lakeview as a direct or indirect result of any failure or refusal by the Successor to perform and abide by all of the terms, covenants, conditions and obligations on the part of Lakeview contained in the Bridge Agreement or any breach by the Successor of the terms of the Bridge Agreement or of the terms hereof.

4. Each of the parties hereto covenants and agrees with the others of them to do all such acts, matters and things as may be requisite and necessary to give full force and effect to the provisions of this Agreement and to carry out and perform the same in accordance with its terms.

5. This Agreement may be executed in several counterparts each of which when executed shall be deemed to be an original and such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have duly executed these present.

**LAKEVIEW DEVELOPMENT LTD.**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**KING STREET HAMILTON HOTEL LIMITED  
PARTNERSHIP**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**THE CORPORATION OF THE CITY OF  
HAMILTON**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

**GGS HOTEL HOLDINGS CANADA INC.**

Per: \_\_\_\_\_



McMILLAN, BINCH

THIS AGREEMENT made as of the 31st day of March, 1989,

.....

B E T W E E N:

THE CORPORATION OF THE CITY OF HAMILTON

(hereinafter called the "City")

OF THE FIRST PART

- and -

LAKEVIEW DEVELOPMENT LIMITED

(hereinafter called "Lakeview")

OF THE SECOND PART

- and -

FIRST PHASE CIVIC SQUARE LIMITED

(hereinafter called "First Phase")

OF THE THIRD PART

- and -

SECOND PHASE CIVIC SQUARE LIMITED

(hereinafter called "Second Phase")

OF THE FOURTH PART

- and -

FOURTH PHASE CIVIC SQUARE LIMITED

(hereinafter called "Fourth Phase")

OF THE FIFTH PART

- and -

GGS HOTEL HOLDINGS CANADA INC.

(hereinafter called "GGS")

OF THE SIXTH PART

- and -

KING STREET HAMILTON HOTEL LIMITED  
PARTNERSHIP

(hereinafter called the "Limited Partnership")

OF THE SEVENTH PART

WHEREAS:

1. The City, as lessor, has entered into a ground lease with Second Phase, as lessee, dated November 19, 1975, which lease has been registered as Instrument No. 21613C.D.;



2. The City, as lessor, has entered into a ground lease with Fourth Phase, as lessee, dated June 1, 1981, which lease has been registered as Instrument No. 197189C.D.;

3. The City, as lessor, has entered into a ground lease with Lakeview, as lessee, dated May 3, 1983, which lease has been registered as Instrument No. 271066C.D. and which lease was amended by agreements dated May 3, 1983 and July 29, 1983 such amending agreements being registered as Instruments No. 292838C.D. and No. 292840C.D. respectively (such lease and amending agreements being collectively called the "Hotel Lease");

4. The City and Lakeview entered into an agreement dated November 19, 1981, registered as Instrument No. 292836C.D., in which Lakeview agreed, inter alia, to construct a hotel (hereinafter called the "Hotel") on the lands referred to in the Hotel Lease, which agreement was amended by further agreements dated August 3, 1982, May 3, 1983 and July 29, 1983 registered as Instrument Nos. 292837C.D., 292838C.D. and 292840C.D. (such agreements and amendments being collectively called the "Development Agreement");

5. The City, Lakeview, Second Phase and Fourth Phase have entered into an interface agreement dated as of July 30, 1984, which agreement has been registered as Instrument No. 161659L.T. and as Instrument No. 320192C.D. (herein referred to as the "Interface Agreement");

6. The Development Agreement, the Hotel Lease and the Interface Agreement provide and set out, inter alia, certain rights and obligations of the parties hereto, namely:

- (a) that Lakeview, as sublessor, shall sublease to the City, as sublessee, the parking area to be included in the construction of the Hotel; and

- (b) that the City, Lakeview, Fourth Phase, Second Phase and First Phase Civic Square Limited ("First Phase") shall enter into a hotel parking agreement (the "Hotel Parking Agreement") wherein the parking area of the Hotel (the "Hotel Parking") shall be pooled with the underground parking provided by Fourth Phase, Second Phase and First Phase on such basis as shall be agreed upon by the parties hereto in the Hotel Parking Agreement;

7. The City and Lakeview wish to amend the Hotel Lease and the parties hereto wish to amend the Interface Agreement all on the terms, covenants and conditions as hereinafter set out.

NOW THEREFORE in consideration of the covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, this agreement witnesseth as follows:

1. Lakeview shall pay to the City, upon the execution of this Agreement, the sum of TWO HUNDRED THOUSAND (\$200,000.) DOLLARS in exchange for the absolute release by the City in favour of Lakeview of Lakeview's obligations to enter into a sublease with the City of the Hotel Parking as contemplated by the Hotel Lease, the Interface Agreement and the Development Agreement and, without limiting the generality hereof, as more specifically set out and described in Section 22.14 of the Hotel Lease.

2. The City and Lakeview do each hereby release absolutely the other from their mutual obligations to enter into a sublease of the Hotel Parking as contained in the Hotel Lease and the Development Agreement and, without limiting the generality hereof, as more specifically set out and described in Section 22.14 of the Hotel Lease and Section 5.01 of the Development Agreement. Subject to the rights of the City under subparagraph 3.03(a)(iii) of the Hotel Lease, the City also hereby releases to receive as additional rent the payments for the capital costs described therein.

Lakeview and its successors in title to the Hotel from all <sup>other</sup> claims or requests for consideration arising from or based on the City's capital contribution to the cost of construction of the Hotel including the Hotel Parking.

3. Lakeview hereby releases absolutely and forever discharges the City from its obligations to provide at its expense and pay for the operation and maintenance of the Hotel Parking as such parking is more specifically referred to and identified in the Development Agreement and the Hotel Lease, including without limitation, Section 5.01 of the Development Agreement and Section 4.02 of the Hotel Lease.

4. The City and Lakeview hereby agree that the Hotel Lease is further amended by the addition of the following as subparagraphs (c), (d) and (e) to Section 12.01 of Article XII:

(c) (i) upon the registration of an assignment of this lease by the Lessee to a third party (herein the "First Assignee"), which assignment requires the leave of the Lessor under the provisions of subparagraph (a) of this Section 12.01, and upon such leave being granted by the Lessor, the Lessee shall continue to be bound by all of the terms, covenants and conditions as contained in this lease and such assignment shall not release or impair the continuing obligations of the Lessee thereunder; and

(ii) upon the registration of an assignment of this lease by the First Assignee to a third party, which assignment requires the leave of the Lessor under the provisions of subparagraph (a) of this Section 12.01, and upon such leave being granted by the Lessor, then the Lessee, the First Assignee and any guarantor(s) of the obligations

and liabilities of the First Assignee in respect of all obligations and liabilities from and after registration of the assignment shall automatically be released from their respective obligations to perform and/or comply with the terms, covenants and conditions contained in this lease and/or in any guarantees or indemnities in favour of the Lessor, as the case may be; and upon the registration of such assignment by the First Assignee to a third party the last sentence of Section 12.01(a) and Section 22.13 of this lease shall be deemed deleted from this lease and of no further force or effect.

- (d) Notwithstanding the provisions contained in Section 22.10 of this lease, upon any request being made to the City by the Lessee, the First Assignee or any subsequent assignee or sub-tenant under this lease, the City shall have 45 days after receipt of such request to advise the requesting party in writing either that it grants its leave to such request or that it withholds its leave to such request, the remaining provisions contained in Section 22.10 to continue to apply;
- (e) The third party on registration of such assignment shall execute and deliver to the Lessor such further assurances of the matters set out in this Section 12.01 as the Lessor may reasonably require;
- (f) The parties agree that GGS is the First Assignee.

5. The City and Lakeview acknowledge and agree that there shall be no accounting whatsoever as between themselves for any income and/or operating expenses including, without limiting the generality hereof, construction costs, structural repairs,



maintenance and ordinary repairs and the operating of the Hotel Parking received and/or incurred by Lakeview up to and including the date of execution of this Agreement.

6. The City acknowledges and agrees that notwithstanding Section 5.01 of the Development Agreement the City is and shall not be entitled to any revenues whatsoever derived from the operation of the Hotel Parking.

7. The City hereby releases Lakeview, Second Phase, Fourth Phase and First Phase from their obligations to enter into the Hotel Parking Agreement with the City as contained in the Interface Agreement and, without limiting the generality hereof, as more specifically set out and described in Section 4 of the Interface Agreement.

8. Lakeview, Second Phase and Fourth Phase do each hereby release the City from its obligations under Section 4 of the Interface Agreement, including without limitation the obligation to enter into the Hotel Parking Agreement (and any easement agreements related to the Hotel Parking Agreement) with Lakeview, Second Phase and Fourth Phase as contained in the Interface Agreement and, without limiting the generality hereof, as more specifically set out and described in Section 4 of the Interface Agreement.

9. Lakeview, Second Phase and Fourth Phase hereby confirm, as amongst themselves, their continuing obligations, as contained in the Interface Agreement, to enter into the Hotel Parking Agreement and, without limiting the generality thereof, the Hotel Parking Agreement as more specifically set out and described in Section 4 of the Interface Agreement.

10. The City and Lakeview do in all respects hereby confirm that the Hotel Lease is in full force and effect, unchanged and unmodified, except as contained in and in accordance with this Agreement.

11. The parties hereto do in all respects hereby confirm that the Interface Agreement is in full force and effect,

unchanged and unmodified, except as contained in and in accordance with this Agreement.

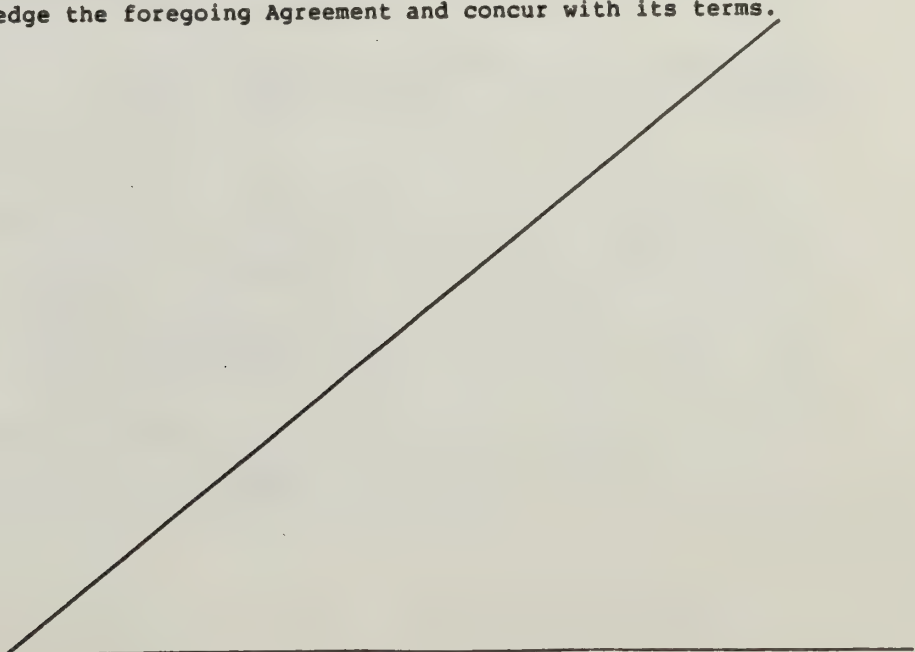
12. It is understood and agreed that all terms and expressions when used in this Agreement shall, where such terms and expressions refer to the Hotel Lease, have the same meanings as they have in the Hotel Lease and, where such terms and expressions refer to the Interface Agreement, have the same meanings as they have in the Interface Agreement.

13. Lakeview, the Limited Partnership and GGS hereby jointly and severally irrevocably indemnify and save harmless the City, its successors and assigns from and against all damages, losses and costs of any kind incurred by the City as a result of any action, cause of action, claim or demand by a third party based upon the execution and delivery of this Agreement by the City, and/or the release of parking rights hereunder.

14. This Agreement is subject to the approval of Canada Mortgage and Housing Corporation and the Minister of Municipal Affairs.

15. Lakeview, the Limited Partnership and GGS agree that this Agreement shall be registered against title to the Hotel lands.

16. First Phase, GGS and the Limited Partnership acknowledge the foregoing Agreement and concur with its terms.



17. This Agreement shall be interpreted under and governed by the laws of the Province of Ontario.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the day and year first written above by affixing their respective corporate seals under the hands of their proper signing officers duly authorized in that behalf.

THE CORPORATION OF THE CITY OF  
HAMILTON

Per: \_\_\_\_\_

Per: \_\_\_\_\_ c/s

LAKEVIEW DEVELOPMENT LIMITED

Per: \_\_\_\_\_

Per: \_\_\_\_\_ c/s

FIRST PHASE CIVIC SQUARE LIMITED

Per: \_\_\_\_\_

Per: \_\_\_\_\_ c/s

SECOND PHASE CIVIC SQUARE LIMITED

Per: \_\_\_\_\_

Per: \_\_\_\_\_ c/s

FOURTH PHASE CIVIC SQUARE LIMITED

Per: \_\_\_\_\_

Per: \_\_\_\_\_ c/s

GGH HOTEL HOLDINGS CANADA INC.

Per: \_\_\_\_\_

Per: \_\_\_\_\_ c/s

KING STREET HAMILTON HOTEL LIMITED  
PARTNERSHIP

Per: \_\_\_\_\_

Per: \_\_\_\_\_ c/s

AGT-HAM3 (JSP)(BB)  
1989-03-17

THIS PEDESTRIAN BRIDGE AGREEMENT in quadruplicate, as of the 28th day of March, 1985.

B E T W E E N :

LAKEVIEW DEVELOPMENT LTD. and LAKEVIEW  
DEVELOPMENT LTD. & KING STREET HAMILTON  
HOTEL LIMITED PARTNERSHIP

(hereinafter called "Lakeview")

OF THE FIRST PART

- and -

THE CORPORATION OF THE CITY OF HAMILTON

(hereinafter called the "City")

OF THE SECOND PART

**WHEREAS:**

- (a) Lakeview and the City have entered into and registered on title to the land described in Schedule "A" attached hereto, the following agreements: Development Agreement, dated November 19, 1981, registered as Instrument No. 292836 C.D.; Agreement dated August 3, 1982, registered as Instrument No. 292837 C.D.; Closing Agreement, dated May 3, 1983, registered as Instrument No. 292838 C.D.; and an Agreement dated July 29, 1983, registered as Instrument No. 292840 C.D. (herein these Agreements shall collectively be referred to as the "Development Agreement");
- (b) The City, as Landlord of the land described in Schedule "A" attached hereto, has entered into a Ground Lease dated May 3, 1983 with Lakeview as Tenant (registered as Instrument No. 271066 C.D.), which Lease was amended by further Agreement dated July 29, 1983, registered as Instrument No. 292840 C.D. and a further Agreement dated May 3, 1983 (Closing Agreement), registered as Instrument No. 292838 C.D. (hereinafter collectively called the "Ground Lease");
- (c) The Development Agreement and the Ground Lease have both been amended by a further Agreement, dated November 1, 1984, registered as Instrument No. \_\_\_\_\_.
- (d) Sections 3.04(2), 5.01, Schedules B-3, B-9 and "C" of the Agreement, registered as Instrument No. 292836 C.D., and Section 10 of an unexecuted Interface Agreement, attached as Schedule "A" to the May 3, 1983 Closing Agreement, registered as Instrument No. 292838 C.D., contemplate that an Interface Agreement will be entered into inter alia by the City and Lakeview to provide for inter alia construction of and use of a climate-controlled overpass (for pedestrians), above King Street West, in the City of Hamilton, to connect both the Hotel and appurtenances as defined in the Ground Lease as the "Improvements" being constructed by Lakeview, located on the land described



in Schedule "A" attached hereto and the other Lloyd D. Jackson Square facilities and buildings North of King Street West, with the Hamilton Convention Centre, the Art Gallery and the Plaza and other facilities situate South of King Street West;

- (e) The City, Lakeview, Second Phase Civic Square Limited and Fourth Phase Civic Square Limited have entered into an Interface Agreement as of July 30, 1984, which Agreement was registered on title to the land described in Schedule "A" attached hereto as Instrument No. 161659 L.T.;
- (f) The July 30, 1984 Interface Agreement does not include (as intended by the Development Agreement, registered as Instrument No. 292836 C.D. and by the Closing Agreement, registered as Instrument No. 292838 C.D.), provisions in respect of the said climate-controlled overpass (for pedestrians) referred to in recital (d) above;
- (g) Section 3.01 of the Ground Lease states that the demised premises are "...subject to and together with the rights and easements reserved or to be reserved as set out in the Development Agreement...".
- (h) The parties hereto wish to record by this Agreement, their respective rights and obligations in respect of the said climate-controlled overpass (for pedestrians) which bridge as further defined in paragraph 12 herein shall hereinafter be called the "Pedestrian Bridge";
- (i) The Regional Municipality of Hamilton-Wentworth, at its meeting of April 17, 1984, in adopting Item 16 of Report 8-84 of the Engineering Services Committee, did grant permission during the pleasure of the Region for a pedestrian bridge across and above King Street West, a highway under the jurisdiction of The Regional Municipality of Hamilton-Wentworth, upon the following conditions:
  - (a) That the minimum clearance over the roadway be 4.42 metres;
  - (b) That no drainage from the structure be allowed to fall onto the road allowance;
  - (c) That normal maintenance functions be undertaken from within the structure;
  - (d) That provision be made on the east side of the structure to permit the fastening of banners so that in future different organizations will not be required to use utility poles or special banner poles for this function;
  - (e) That the City of Hamilton save the Region harmless from all actions, interests, claims, demands, costs, damages, expenses and loss associated with the Pedestrian Bridge."

- (j) The City has retained Trevor P. Garwood-Jones, an architect, to prepare plans and specifications for the Pedestrian Bridge and the City has entered into a contract with Pigott Construction Limited for the construction of that Pedestrian Bridge at a price of One Million, Nine Thousand Dollars (\$1,009,000.00);
- (k) Lakeview has paid to the City the sum of Sixty-Four Thousand, Eight Hundred & Forty Dollars (\$64,840.00) in respect of the City's construction contract with Pigott Construction Limited and agreed to assume other obligations and expenses referred to herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of the premises and the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set out and in further consideration of the sum of One (\$1.00) Dollar paid by each of the parties hereto to the other (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

1. Lakeview hereby grants to the City, its successors and assigns, and all those claiming under any of them, the right, interest and EASEMENT on, over, along and upon those areas of the Improvements on Lakeview's leasehold land described in Schedule "A" attached hereto, more particularly described in Schedule "A<sub>1</sub>", hereto, to be enjoyed and used as appurtenant to the City's land described in Schedule "B" attached hereto, for and during a term commencing on March 28, 1985 and continuing to and including the 31st day of October, 2069, in accordance with the terms and conditions set out herein:

1.1 The easement shall be for the purposes set out in this Agreement, including the following:

- (a) to enter onto, install, construct, reconstruct, connect, remove, repair, operate, maintain, alter and replace the Pedestrian Bridge, including all appurtenances thereto, to the Plaza Level (Elevation 337' above sea level) of Lakeview's Improvements situate within the limits of the leasehold land described in Schedule "A" at the location shown on Schedule A<sub>2</sub> hereto;
- (b) for servants, agents, contractors and workmen and all other persons duly authorized by the City, at all reasonable times and from time to time, to pass and repass over, along and on that portion of Lakeview's leasehold land described as \*, and over, along and on the areas open to the public of the Improvements located on the Schedule "A" leasehold land with all plant, machinery, material, vehicles and equipment which may be necessary or incidental to the exercise and enjoyment of the rights of the City under this Agreement;
- (c) for the provision of the necessary and sufficient physical support and accommodation to the installation, construction, repair, reconstruction, alteration, replacement and use of the Pedestrian Bridge on the Schedule "A" leasehold land as provided for in this Agreement;

- (d) to permit the Pedestrian Bridge to remain on, affixed and attached to the portion of Lakeview's Improvements on the Schedule "A" leasehold land for the purposes of this Agreement at the location shown on Schedule "A<sub>2</sub>" hereto;

1.2 This easement shall be exercised by the City in a reasonable and usual manner so as to not unnecessarily interfere with the Hotel business of Lakeview.

1.3 The City covenants:

- (a) that all work performed by or on behalf of the City for the construction of the Pedestrian Bridge and to Lakeview's Schedule "A" leasehold premises in connection therewith have been properly and completely constructed in accordance with reasonable construction standards by fully qualified contractors of the City, in a good and workmanlike manner and in compliance with municipal and provincial rules and regulations; and,
- (b) that the City shall cause to be removed liens against the Schedule "A" leasehold lands arising in connection with the work performed for, materials furnished to and obligations incurred by the City in connection with the construction and maintenance of the Pedestrian Bridge and the City hereby agrees to indemnify and save Lakeview harmless from all losses, damages, costs and expenses relating thereto;
- (c) the City hereby agrees to indemnify and save Lakeview harmless from all losses, costs, damages and expenses incurred or suffered by Lakeview as a result of any damage to the Improvements as a result of the Pedestrian Bridge being damaged and thereby directly or indirectly causing damage to such Improvements; provided that such indemnity shall be limited in amount to the lesser of (i) the amount that Lakeview would be entitled to recover from the person(s) causing damage to the Pedestrian Bridge if Lakeview had a direct cause of action for such damage to the Improvements and was entitled to recover from such person(s); and (ii) the amount actually awarded to and received by the City (or received by the City under a settlement) in its action for damages to the Pedestrian Bridge and/or the Improvements to the extent that such money relates to the damage to the Improvements. The City agrees to diligently pursue all such actions at its cost and expense, provided that if any such loss, cost damage or expense is covered by and paid for from insurance carried by the City, then the City shall have no obligation to pursue any action.

2. Lakeview hereby:

- (a) transfers the said easement and rights free and clear of all



encumbrances save for the encumbrances set out in Schedule "B<sub>1</sub>" hereto, to the City,

- (b) covenants with the City that it shall have the quiet possession of the said easement and rights.

3. Notwithstanding any other provision in this Agreement to the contrary, the use of the pedestrian walkway portion of the Pedestrian Bridge shall be reserved at all reasonable hours for pedestrian use by members of the public as aforesaid in paragraph 1.1 above, and in accordance with such rules and regulations as the City and Lakeview may agree, from time to time, but shall be publicly usable open space as defined in the Development Agreement, the Ground Lease and the Interface Agreement and consistent with the reasonable requirements, rules and regulations applicable to publicly usable open space in Lloyd D. Jackson Square (save as amended in this Agreement).

Provided however, that from time to time:

- (a) Lakeview shall be entitled, upon twenty-four (24) hours' notice to the City to close, for a temporary duration only, the Hotel doors to the Pedestrian Bridge and/or to request the City to close for a temporary duration only, the Convention Centre's doors to the Pedestrian Bridge in the event that certain events or patrons of such events, including without limitation, events or patrons of the Copps Coliseum, the Convention Centre or the Hotel are, in Lakeview's opinion (acting reasonably), disruptive or adverse to the operation of the Hotel or the Pedestrian Bridge; and,
- (b) The City shall be entitled, upon twenty-four (24) hours' notice to Lakeview to close, for a temporary duration only, the Convention Centre's doors to the Bridge and/or to request Lakeview to close for a temporary duration only, the Hotel's doors to the Bridge in the event that certain events or patrons of such events, including without limitation, events or patrons of the Copps Coliseum, the Convention Centre or the Hotel are, in the City's opinion (acting reasonably), disruptive or adverse to the operation of the Convention Centre or the Pedestrian Bridge.

- 4. (a) Lakeview hereby grants through that portion of its leasehold land described in Schedule A<sub>1</sub>, free and clear of all encumbrance save for the encumbrances set out in Schedule "B<sub>1</sub>" hereto, the right of ingress and egress over the pedestrian walkway on the Plaza Level of its Improvements to enable the free and unobstructed movement of pedestrians to and from the Pedestrian Bridge for access to and from the land South of King Street West, to and from Lakeview's premises and the land and premises of Lloyd D. Jackson Square, North of King Street West, including, without limiting the generality of the foregoing, the adjacent premises leased by the City to Second Phase Civic Square Limited and to Fourth Phase Civic Square Limited, as well as, the City's Trade Centre/Arena;



(b) Lakeview and the City acknowledge and agree that the Pedestrian Bridge shall be used as a pedestrian walkway for the use of the public, the owners, occupants and other users, from time to time, of the facilities situate South of King Street West (including, for example, the Hamilton Convention Centre, the Art Gallery, Hamilton Place and the Plaza, and the land described in Schedule "B"), in common with the public, the owners, occupants and other users, from time to time, of the leasehold land described in Schedule "A" and of that portion of Lloyd D. Jackson Square situate North of King Street West, for the purpose of providing pedestrian access to and from the Improvements of Lakeview and the lands and premises in Lloyd D. Jackson Square, North of King Street West, above and across King Street West, to and from the land and facilities situate South of King Street West, (including, for example, Hamilton Place, the Plaza, the Art Gallery and the Schedule "B" land);

(c) The City hereby grants to Lakeview, its successors and assigns to the full extent that it is capable of doing so, in common with all others entitled thereto from time to time the permission to enter on, over, along and upon that portion of the City's Pedestrian Bridge within the limits of Lakeview's leasehold land described in Schedule "A", to be enjoyed and used as appurtenant to Lakeview's leasehold land described in Schedule "A" attached hereto, for and during a term of Lakeview's easement herein to the City described in Section 1 hereof, for the following purposes:

- (i) to enter onto said portion of the Pedestrian Bridge for the purpose of installing, constructing, reconstructing, repairing, operating, maintaining, altering and replacing Lakeview's Improvements including all appurtenances thereto;
- (ii) for servants, agents, contractors and workmen and other persons duly authorized by Lakeview, at all reasonable times and from time to time, to pass and repass on the said portion of the Pedestrian Bridge, with all plant, machinery, material, vehicles and equipment which may be necessary or incidental for the purpose set out in paragraph (c)(i) above.
- (iii) provided always that it is understood and agreed by Lakeview that this easement to Lakeview in paragraph 4(c)(i) and (ii) above is subject to all the rights of the City under this easement Agreement herein from Lakeview to the City including without limitation the obligation on Lakeview in section 8(a).
- (iv) Lakeview further covenants to exercise its rights in paragraph 4(c)(i) and (ii) above in a reasonable and usual manner so as not to unnecessarily interfere with the rights of the City under this Agreement including the use of the Bridge by pedestrians.

4.1 The City hereby grants to Lakeview, its successors and assigns to the full extent that it is capable of doing so, in common with all others entitled thereto from time to time, the permission to enter on, over and along and upon the Pedestrian Bridge to be enjoyed and used as appurtenant to Lakeview's leasehold land described in Schedule "A" hereto for and during the term of Lakeview's easement herein to the City described in Section 1 hereof for the following purpose, namely: to be used as a pedestrian walkway for the use of the owners, occupants and other users, from time to time of Lakeview's leasehold land described in Schedule "A" hereto in order to provide pedestrian access to and from the improvements of Lakeview and the lands and premises comprising the Convention Centre.

5. (a) Title to the Pedestrian Bridge shall be vested in and remain with the City, notwithstanding that it is, at its northerly end, affixed to Lakeview's Improvements.
- (b) In the event of the termination of the Ground Lease for any reason whatsoever (in which event title to and ownership of Lakeview's Improvements shall, in due course, according to the terms of the Ground Lease, vest in the City) this Pedestrian Bridge Agreement shall terminate.
- (c) Notwithstanding any other provision contained in this Agreement, in the event of any conflict between the terms of this Agreement and the terms of the Ground Lease and/or the Development Agreement, the terms contained in and set out in the Ground Lease and/or the Development Agreement shall prevail.

5.1 The title of the City shall include such rights as:

- (a) the right of the City to control the use, to rent, to license or to use the Pedestrian Bridge or any part thereof with banners, lights, flags, signs, commercial and non-commercial display space, traffic control devices, utilities, and purposes similar to all of the foregoing in a tasteful and professional appearance and provided that none of the foregoing shall advertise or promote any goods, services or facilities which are competitive with goods, services or facilities offered by Lakeview in the Schedule "A" leasehold premises;
- (b) the right of the City to control the operation, maintenance, repair, replacement, construction, reconstruction, alteration, removal, heating, cooling and lighting of the Pedestrian Bridge for the purposes of this Agreement;
- (c) notwithstanding that title to the Pedestrian Bridge is vested in the City, the rights of the City referred to in paragraphs (a) and (b) above, are subject to the following:

- (i) the mutual rights of the parties referred to in Section 3 in respect of the use of the pedestrian walkway portion of the Pedestrian Bridge; and,
  - (ii) the approval of Lakeview in respect of the use of that portion of the Pedestrian Bridge within the limits of Lakeview's Schedule "A" leasehold land with banners, flags, signs, commercial and non-commercial display space; and,
- (d) notwithstanding anything to the contrary in this Agreement, the rights of Lakeview under this Agreement are subject to the right of the City to close the Pedestrian Bridge at any time or from time to time throughout the term hereof, upon at least seven (7) days' notice to Lakeview, for such temporary periods of time as may be reasonably necessary for the purpose of exercising its rights or fulfilling its duties under this Agreement, and Lakeview shall not be entitled to claim from or be paid any amount by the City in respect of such closure or resulting inconvenience or expense.
6. (a) The City shall operate, maintain and repair the Pedestrian Bridge including without limiting the generality of the foregoing, heat, cool, ventilate, light, supply electricity for and security of the Pedestrian Bridge.
- (b) The costs of the matters referred to in paragraph 6(a) shall be divided between Lakeview and the City as follows:

94% of the costs shall be payable by the City; and  
6% of the costs shall be payable by Lakeview

Notwithstanding sections 6(a) and 6(b) hereof, Lakeview shall not be responsible for contributing to the cost of:

- (i) the insurance of the Pedestrian Bridge contemplated herein; or
  - (ii) repair of the Pedestrian Bridge covered by insurance carried by the City or that should have been carried by the City; or
  - (iii) repair, replacement or reconstruction of the Pedestrian Bridge, except as a result of wear and tear.
- (c) The City will invoice Lakeview for its share of the costs not more often than quarterly. The City will maintain true and accurate accounts, records, books and data with respect to these costs and agrees that Lakeview shall have the right at all reasonable times to examine these records and to receive copies of such records. Where Lakeview's share of expenditures will exceed the sum of \$10,000.00 in any year, it shall

WDM^AGRMCJAN:VWRE





AGT-HAM2 (JSP)(BB)  
1989-03-10

THIS TRANSFER OF EASEMENT made this 29th day of November, 1985.

B E T W E E N :

THE CORPORATION OF THE CITY OF HAMILTON

(hereinafter called the "City")

OF THE FIRST PART,

- and -

LAKEVIEW DEVELOPMENT LTD. and LAKEVIEW  
DEVELOPMENT LTD. & KING STREET HAMILTON  
HOTEL LIMITED PARTNERSHIP

(hereinafter called "Lakeview")

OF THE SECOND PART

**WHEREAS:**

1. The City has entered into a ground lease with Second Phase Civic Square Limited dated November 19, 1975, which Lease has been registered as Instrument No. 21613 C.D.;
2. The City has entered into a ground lease with Fourth Phase Civic Square Limited dated June 1, 1981, which Lease has been registered as Instrument No. 197189 C.D.;
3. The City has entered into a ground lease ("Ground Lease") with Lakeview Development Ltd. dated May 3, 1983, which Lease has been registered as Instrument No. 271066 C.D. on January 31, 1984;
4. The City, Lakeview, Second Phase Civic Square Limited and Fourth Phase Civic Square Limited have entered into an Interface Agreement dated July 30, 1984, which Agreement has been registered as Instrument No. 161659 L.T. and as Instrument No. 320192 C.D. (herein referred to as the "Interface Agreement");
5. Section 6 of the Interface Agreement includes provisions in respect of:
  - the reconstruction and extension of a truck route previously constructed by Fourth Phase Civic Square Limited, pursuant to the Fourth Phase Ground Lease
  - That after the reconstructed and extended truck route is completed by the City in conjunction with the construction of the Trade Centre/Arena known as the Victor K. Copps Coliseum (hereinafter referred to as "Copps Coliseum"), the Interface Agreement includes provision for:
    - (i) the preparation and deposit by the City of a reference plan of survey; and
    - (ii) easement agreements for the reconstructed and extended truck route including an easement from the City, as transferor in favour of Lakeview, as transferee.

6. The reconstructed and extended truck route was completed by the City on the land described in Schedule "A" attached hereto (hereinafter referred to as the "new truck route") on or about the 29th day of November, 1985.

A survey of the new truck route was prepared and deposited by the City as Plan 62R-8136.

7. The parties have executed this agreement as the easement agreement referred to in the Interface Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the sum of TWO DOLLARS (\$2.00) now paid by each party to the other (the receipt and sufficiency of which are acknowledged), the parties hereto agree as follows:

1. Subject to the conditions contained herein and in the Interface Agreement, the City hereby transfers in common with all others entitled thereto from time to time, to Lakeview, to be enjoyed and used as appurtenant to Lakeview's leasehold land described in Schedule "B" attached hereto, for and during the term of the Ground Lease to Lakeview less one day, (namely, commencing on May 3, 1983 and ending on October 30, 2069, unless the Ground Lease is terminated earlier than October 30, 2069), on, over, along and upon the new truck route, the non-exclusive right, interest and EASEMENT to enter onto and use the new truck route as a right-of-way for vehicular access only in a one way direction as follows:

- (a) commencing at the easterly limit of the public highway known as Bay Street North and continuing along the new truck route to the loading dock designated as Parts One and Two on Plan 62R-6886 (hereinafter referred to as the "loading dock"); and,
- (b) continuing in the same one way direction from the loading dock along the new truck route to the southerly limit of the public highway known as York Boulevard.

2. Lakeview covenants and agrees that its use of the new truck route shall:

- (a) be limited to trucks and other vehicles delivering or removing supplies, materials, equipment, furniture, garbage and such other matters and things as may reasonably be required by Lakeview, its suppliers, contractors, employees, agents and commercial tenants and all those claiming under them, to and from the loading dock;
- (b) be used solely by Lakeview, its suppliers, contractors, employees, agents and commercial tenants and all those claiming under them for the purposes set out in paragraph (a) above, (and shall not be used for the transportation of persons to and from Lakeview's premises described in Schedule "B" including, without limitation, employees, Hotel guests or visitors nor shall it be used for any other purpose including, without limitation, by taxis or for access to any car parking lot or garage);

HOTEL MANAGEMENT AMENDING AGREEMENT

THIS AMENDING AGREEMENT dated as of the 31st day of March, 1989.

B E T W E E N :

THE CORPORATION OF THE CITY OF HAMILTON,  
(the "City"),  
OF THE FIRST PART,

- and -

LAKEVIEW DEVELOPMENT LTD.,  
("Lakeview"),  
OF THE SECOND PART,

- and -

GGS HOTEL HOLDINGS CANADA INC.,  
(the "Assignee"),  
OF THE THIRD PART,

- and -

KING STREET HAMILTON HOTEL LIMITED PARTNERSHIP  
(the "Limited Partnership"),  
OF THE FOURTH PART.

WHEREAS:

(a) Lakeview and the City have entered into and registered on title to the land described in Schedule "A" attached hereto, the following agreements:

- (i) Development Agreement dated November 19, 1981, registered as Instrument No. 292836 C.D.;
- (ii) Agreement dated August 3, 1982, registered as Instrument No. 292837 C.D.;
- (iii) Closing Agreement dated May 3, 1983, registered as Instrument No. 292838 C.D.;
- (iv) Agreement dated July 29, 1983, registered as Instrument No. 292840 C.D.;
- (v) Agreement dated November 1, 1984 between Lakeview, the City and Citibank Canada, registered as Schedule "B" to Agreement registered as Instrument No. \_\_\_\_\_;
- (vi) Agreement dated August 1, 1985, registered as Instrument No. \_\_\_\_\_;
- (vii) Agreement dated August 21, 1985, registered as Instrument No. 221565 L.T.;
- (vii) Agreement dated December 1, 1986, registered as Instrument No. \_\_\_\_\_ (Banquet Facilities Amending Agreement)

(these agreements shall herein collectively be referred to as the "Development Agreement");

(b) The City, as the Landlord of the land described in Schedule "A" attached hereto has entered into a Ground Lease dated May 3, 1983 with Lakeview as tenant (registered as Instrument No. 271066 C.D.), which lease was amended by by certain agreements, including Agreement dated May 3, 1983 (the "Closing Agreement") registered as Instrument No. 292838 C.D., further



Agreement dated July 29, 1983, registered as Instrument No. 292840 C.D., a further Agreement dated November 1, 1984 between Lakeview, the City and Citibank Canada, registered as Schedule "B" to an Agreement registered as Instrument No. \_\_\_\_\_ and a further Agreement dated August 21, 1985 and registered as Instrument No. 221565 L.T. (hereinafter collectively called the "Lease");

- (c) Lakeview executed a sub-lease (the "Sublease") dated as of October 1, 1984 in favour of Lakeview and the Limited Partnership (together, the "Sublessees") registered as Instrument No. 153111 L.T.;
- (d) By Amending Agreement dated the 29th day of July, 1983 (registered as Instrument No. 292840 C.D.), Lakeview and the City amended the Development Agreement, the Lease, a certain agreement (the "Planning Act Agreement") dated as of the 3rd day of May, 1983 (registered as Instrument No. 292839 C.D.) and the Closing Agreement by changing the hotelier (the "Hotelier") as defined in the Lease and the Development Agreement, and as contemplated in other Agreements, from Hilton International Co. to ITT Industries Canada Ltd.;
- (e) By Amending Agreement dated the 21st day of August, 1985 (registered as Instrument No. 221565 L.T.), Lakeview, the City, and the Sublessees amended the Development Agreement, the Lease, the Planning Act Agreement and the Sublease by changing the Hotelier from ITT Industries Canada Ltd. to Lakeview Development Ltd. and by changing the hotel agreement (the "Hotel Agreement") as defined in the Lease, and as attached as Schedule "K" to the Development Agreement (Instrument No. 292836 C.D.) to the agreement (the "Original Lakeview Management Agreement") attached as Schedule "A" to the Amending Agreement dated as of August 21, 1985 and registered as Instrument No. 221565 L.T.;
- (f) Lakeview has agreed to assign the Lease to and in favour of the Assignee effective as March 31, 1989 or such other date as may be agreed upon between Lakeview and the Assignee (the "Effective Date") and the Sublessees have agreed to surrender the Sublease;
- (g) Lakeview and the Assignee have agreed that Lakeview shall manage the Sheraton Hamilton Hotel (the "Hotel") located on the lands described in Schedule "A" attached hereto, on behalf of the Assignee, effective as of and from the Effective Date, pursuant to the terms of the agreement (the "New Lakeview Management Agreement") attached hereto as Schedule "B", and have requested that the City agree as provided for herein that the Hotel Agreement shall be changed from the Original Lakeview Management Agreement to the New Lakeview Management Agreement.

NOW THEREFORE in consideration of the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties hereto agree as follows:

- (1) Section 1.01(h) of the Lease, as amended, shall be further amended effective as of the Effective Date, by deleting the same and substituting therefor the following:
  - (h) "Hotel Agreement" shall mean the Agreement attached as Schedule "B" to an Amending Agreement dated as of the 31st day of March, 1989, entered into

between The Corporation of the City of  
Hamilton, Lakeview Development Ltd. and  
GGS Hotel Holdings Canada Inc.

- (2) Section 16.03 of the Lease shall be deleted effective as of and from the Effective Date.
- (3) The Development Agreement, the Planning Act Agreement, and the Lease, as amended, are hereby deemed to be further amended so that all references to Lakeview Development Ltd., as manager of the Hotel or "Hotelier" therein shall, in all cases, mean Lakeview in its capacity as manager for and on behalf of the Assignee, and all references to the management agreement for the Hotel, or to the Hotel Agreement, shall refer to the Agreement attached hereto as Schedule "B", provided that nothing herein contained shall otherwise, in any way, waive, modify, alter or amend the provisions of Subsection (j) of Section 3.06 of the Development Agreement and the obligations of Lakeview thereunder.
- (4) The terms and conditions of the Development Agreement, the Lease and the Planning Act Agreement as amended herein are hereby ratified and confirmed and the parties agree that the aforesaid Agreements shall continue in full force and effect, as amended hereby.
- (5) Nothing in this Agreement or in the Lease or any other Agreement shall amend Section 4.04(b) of the Development Agreement (Instrument No. 292836 C.D.), or derogate from the right of Lakeview to receive from the City a "final completion certificate" or "certificate of completion", as referred to therein, which certificate shall pursuant to the terms of Section 4.04(b) of the Development Agreement, effectively discharge Lakeview from each and every obligation, covenant, agreement and undertaking contained in the Development Agreement.
- (6) The Assignee and Lakeview represent to the City that they have applied to ITT Industries of Canada Ltd. (Sheraton) for a transfer and assignment of the licence agreement (the "Licence Agreement") and reservation system agreement (the "Reservation System Agreement") in form attached to the Agreement dated August 21, 1985 (registered as Instrument No. 221565 L.T.) as Schedules "B" and "C", respectively, and that the Assignee and Lakeview shall exercise their best efforts to complete such transfer and assignment as expeditiously as possible and prior to April 30, 1989 and shall do such things as may be reasonably necessary in connection therewith, and that the Assignee shall maintain such Agreements in full force and effect, in accordance with their terms. The Assignee shall not change the said Licence Agreement and Reservation System Agreement for the operation of the Hotel as a Sheraton Inn to a license to operate the Hotel as some other type of hotel or under any name other than "Sheraton Hamilton Hotel", without the consent of the City, which consent shall not be unreasonably withheld.
- (7) Notice to the Assignee shall be addressed and delivered to the Assignee at:

GGS HOTEL HOLDINGS CANADA INC.  
c/o McMillan, Binch  
Barristers and Solicitors  
P.O. Box 38, South Tower  
Royal Bank Plaza  
Toronto, Ontario  
M5J 2J7  
Attention: David McCordic

- (8) (a) This Agreement is subject to the approval of Canada Mortgage and Housing Corporation and the Minister of Municipal Affairs.
- (b) The City will apply for the approvals set out in paragraph 8(a) above and shall take all steps necessary or desirable for the purpose of such applications. The Assignee and Lakeview agree to co-operate in the obtaining of such approvals.
- (9) This Agreement is conditional upon the assignment by Lakeview in favour of the Assignee of its interest in the Lease.
- (10) The Limited Partnership consents to the within provisions. The Sublessees and Lakeview hereby terminate the Original Lakeview Management Agreement effective as of the Effective Date, and the City hereby consents to such termination.
- (11) In addition to the indemnities set out in the Development Agreement, and without in any way, limiting or abrogating such indemnities, Lakeview, the Limited Partnership and the Assignee hereby jointly and severally irrevocably agree at all times to indemnify and save harmless the City, and its successors, assigns and all those claiming under it or them, from and against all actions, causes of action, interests, claims, demands, costs, damages, expenses or losses of any kind or nature whatsoever which the City or any of them, may bear, suffer or be put to by reason of, in connection with, or in any way referable to this agreement.
- (12) Time shall in all respects be of the essence hereof.
- (13) This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have hereunto caused to be affixed their corporate seals under the hands of their proper officers duly authorized in that behalf.

THE CORPORATION OF THE CITY OF HAMILTON

Per: \_\_\_\_\_  
Mayor

Per: \_\_\_\_\_  
(Deputy) City Clerk

LAKEVIEW DEVELOPMENT LTD.

Per: \_\_\_\_\_

GGG HOTEL HOLDINGS CANADA INC.

Per: \_\_\_\_\_

KING STREET HAMILTON HOTEL LIMITED  
PARTNERSHIP BY ITS GENERAL PARTNER;  
127089 CANADA LTD.

Per: \_\_\_\_\_

Per: \_\_\_\_\_



ASSIGNMENT OF INTERFACE AGREEMENT

THIS AGREEMENT made as of and effective from the 31st day of March, 1989.

BETWEEN:

THE CORPORATION OF THE CITY OF HAMILTON  
(hereinafter referred to as the "City"),  
OF THE FIRST PART,

- and -

LAKEVIEW DEVELOPMENT LTD.,  
(hereinafter referred to as the "Assignor"),  
OF THE SECOND PART,

- and -

GGS HOTEL HOLDINGS CANADA INC.  
(hereinafter referred to as the "Assignee"),  
OF THE THIRD PART,

- and -

SECOND PHASE CIVIC SQUARE LIMITED  
(hereinafter referred to as "Second Phase"),  
OF THE FOURTH PART,

- and -

FOURTH PHASE CIVIC SQUARE LIMITED  
(hereinafter referred to as "Fourth Phase"),  
OF THE FIFTH PART.

WHEREAS the City, the Assignor, Second Phase and Fourth Phase entered into an interface agreement dated July 30, 1984 registered in the Hamilton-Wentworth Registry Office as Instrument No. 161659 LT, and as Instrument No. 320192 CD and as amended by agreement dated March 31, 1989 registered as Instrument No. (the "Interface Agreement") setting out certain of their respective rights and obligations pertaining to certain lands, legally described in Schedule "A", "B" and "C" attached to the Interface Agreement;

AND WHEREAS the Assignor has agreed to assign its interest in the Hotel Lease (as such term is defined in the Interface Agreement) and the land (the "Hotel Land") described in Schedule "A" attached hereto, and has agreed to sell to the Assignee all of its right, title and interest in and to the Sheraton Hamilton Hotel and such other improvements (together, the "Hotel") as are owned by the Assignor and situated on the Hotel Land effective as of the date hereof (the "Effective Date");

AND WHEREAS Section 13(g) of the Interface Agreement provides that the parties thereto shall not dispose of any of their respective interests in the lands described in Schedules "A", "B" and "C" attached to the Interface Agreement without first acquiring from the purchaser, transferee or assignee their undertaking to abide by and be bound by the Interface Agreement and any agreement, easement, lease or sub-lease contemplated thereby;

AND WHEREAS the parties hereto have agreed to enter into this Assignment of Interface Agreement on the terms set out herein, which include the undertaking of the Assignee as required by the terms of the Interface Agreement.



NOW THEREFORE in consideration of the mutual covenants and agreements between the parties to this Agreement and the sum of ONE (\$1.00) DOLLAR paid by each of the parties hereto to each of the other parties hereto, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The Assignee hereby covenants and undertakes, in favour of all of the other parties hereto, to fulfil all of the Assignor's outstanding obligations provided for under, and to abide by, comply with and be bound by all of the terms, covenants and conditions of the Interface Agreement and any agreement, easement, lease or sub-lease contemplated by the terms of the Interface Agreement and executed pursuant to the terms thereof, as of and from the Effective Date, in accordance with the requirements of Section 13(g) of the Interface Agreement.
2. The Assignor hereby transfers, sets over and assigns unto the Assignee, as of and from the Effective Date, all of its right, title, benefit, and interest in and to the Interface Agreement and all agreements, easements, leases and sub-leases contemplated by the terms of the Interface Agreement and executed pursuant to the terms thereof, to have and to hold the same unto the Assignee, subject to the Assignee's observance and performance of and compliance, with the terms, covenants, conditions and obligations on the part of the Assignor under the terms of the Interface Agreement and such agreements, easements, leases and subleases.
3. The City, Second Phase and Fourth Phase consent to the Assignment of the Interface Agreement contained herein from the Assignor to the Assignee as of and from the Effective Date and hereby covenant and agree with and in favour of the Assignee and the Assignor that they shall abide by and be bound by all of the terms, covenants and conditions, and shall perform and fulfil all of their respective obligations, contained in the Interface Agreement and any agreement, easement, lease or sub-lease contemplated by the Interface Agreement and executed by such party pursuant to the terms thereof. Notwithstanding anything to the contrary herein the parties agree that by giving their consent pursuant to this agreement the City does not thereby release any party from the observance or performance of all terms, covenants and conditions contained in the Interface Agreement to be performed or observed.
4. Second Phase, Fourth Phase and the Assignor hereby represent and warrant to the Assignee that:
  - (a) The Assignor has completed construction of an exit from the Hotel Parking to the Fourth Phase land as described in Schedule "B" to the Interface Agreement and a widening of the existing egress ramp from the Second Phase Improvements to King Street West and has completed all other alterations required to provide egress from the Hotel Parking to King Street West as required by Section 4.4(a) of the Interface Agreement, subject only to the outstanding obligation of the Assignor to pay a sum of approximately \$21,000.00, not to exceed \$27,000.00, to Fourth Phase for changes to be carried out by Fourth Phase to certain concrete walls shown on Detail "D" on Reference Plan 62R-8548 and for certain monitoring equipment to be installed by Fourth Phase [the "Parking Alterations"], as more fully set out in the Hotel Parking Agreement. The Assignee shall bear no costs for the Parking Alterations. Accordingly, the \$150,000.00 letter of credit referred to in Section 4.4(b) of the Interface Agreement has been released and is no longer required and the Assignor is no longer required to provide the indemnities and insurance coverage referred to in Section 4.4(c) of the Interface Agreement. Accordingly, the Assignee has no present or future obligation, financial or otherwise, pursuant to this provision.

- (b) The Assignor has compensated Second Phase and Fourth Phase for all the costs and expenses incurred in respect of the construction of the egress route and any matters relating thereto (except as referred to in paragraph 4(a) above) as required by Section 4.4(f) of the Interface Agreement, including all costs and expenses up to and including the Effective Date, and accordingly, the Assignee has no present or future obligation, financial or otherwise, pursuant to this provision.
- (c) Fourth Phase has constructed the truck loading dock and the Assignor has paid the sum of \$114,400.00 to Fourth Phase, as required under Section 5(a) of the Interface Agreement, and accordingly, the Assignee has no present or future obligation, monetary or otherwise pursuant to this provision.
- (d) The Assignor has completed the construction of the interconnection between Parts 3 and 4 pursuant to Section 7 of the Interface Agreement and the Assignor is not obligated to pay to Fourth Phase any amount in respect thereof.

5. The Assignor hereby represents and warrants to the Assignee that:

- (a) the Interface Agreement hereby assigned is in full force and effect, unamended, except as referred to herein, is in good standing and there are no defaults thereunder on the part of the Assignor;
- (b) the Assignor has a good, valid and legal right to absolutely assign and transfer the Interface Agreement to the Assignee, free and clear of all assignments, mortgages, charges, pledges, security interests and other encumbrances subject to the permitted encumbrances listed on Schedule "B" attached hereto;
- (c) the Assignor has taken all necessary action, corporate or otherwise, to authorize the execution and delivery of this Assignment and the performance of its obligations contained in this Assignment;
- (d) the execution, delivery and performance of this Assignment will not conflict with, be in or contribute to a contravention, breach or default under the Assignor's constituting documents, by-laws, resolutions or the provisions of any indenture, instrument, agreement or undertaking to which the Assignor is a party or bound, or under any valid regulation, order, writ or decree of any court, tribunal, arbitration panel or governmental authority;
- (e) this Assignment has been duly executed by the Assignor and when duly executed and delivered by all parties hereto will be in full force and effect and will constitute a legal, valid and binding obligation of the Assignor, enforceable in accordance with its terms; and
- (f) there is no pending or threatened litigation, action, claim or fact known to the Assignor and not disclosed to the Assignee which adversely affects or could adversely affect the rights of the Assignor or Assignee thereunder or under this Assignment;

6. The Assignee hereby agrees to indemnify and save the Assignor harmless from all suits, losses, costs, liabilities, damages and expenses suffered or incurred by the Assignor in connection with or as a result of the Assignee's failure to fulfil all of the Assignor's obligations provided for under the Interface Agreement or to abide by and comply with all of the terms, covenants

and conditions of the Interface Agreement and all of the agreements, easements, leases and sub-leases contemplated by the terms of the Interface Agreement and executed pursuant to the terms thereof as required pursuant to paragraph 1 hereof, save and except for any such liabilities, debts and obligations as may arise, or may be incurred by the Assignor, prior to the Effective Date.

7. The Assignee acknowledges that it has received a copy of the executed Interface Agreement as amended, and is familiar with the terms, covenants and conditions contained therein.

8. The parties in all other respects hereby confirm that the Interface Agreement is in full force and effect, unchanged and unmodified except as set out herein. All undefined capitalized terms and expressions used in this Agreement shall have the meanings ascribed thereto under the terms of the Interface Agreement.

9. This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns, respectively.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the day and year first above written by affixing their respective corporate seals under the hands of their proper signing officers duly authorized in that behalf.

THE CORPORATION OF THE CITY OF HAMILTON

Per: \_\_\_\_\_

Per: \_\_\_\_\_

LAKEVIEW DEVELOPMENTS LTD.

Per: \_\_\_\_\_

Per: \_\_\_\_\_

GGs HOTEL HOLDINGS CANADA INC.

Per: \_\_\_\_\_

Per: \_\_\_\_\_

SECOND PHASE CIVIC SQUARE LIMITED

Per: \_\_\_\_\_

Per: \_\_\_\_\_

FOURTH PHASE CIVIC SQUARE LIMITED

Per: \_\_\_\_\_

Per: \_\_\_\_\_

SLA^AGRINT:VWRE  
March 22, 1989



CERTIFICATE OF FINAL COMPLETION

TO: GGS Hotel Holdings Canada Inc.  
c/o McMillan, Binch  
Box 38, South Tower  
Royal Bank Plaza  
Toronto, Ontario M5J 2J7

AND TO: Lakeview Development Ltd.  
6th Floor - 185 Carlton Street  
Winnipeg, Manitoba R3C 3J1

AND TO: McMillan, Binch  
Box 38, South Tower  
Royal Bank Plaza  
Toronto, Ontario M5J 2J7

AND TO: McJannet Rich  
5th Floor - 185 Carlton Street  
Winnipeg, Manitoba R3C 3J1

Re: Development Agreement dated the 19th day of November, 1981 and registered against title to the property on which the Sheraton Hamilton Hotel is situated, as Instrument No. 292838 CD, as amended by certain Agreements including Agreements dated August 3, 1982, May 3, 1983, July 29, 1983, August 1, 1985, August 21, 1985, August 25, 1985 and December 1, 1986, all between the Corporation of The City of Hamilton and Lakeview Development Ltd., and as further amended by Agreement dated November 1, 1984 between The Corporation of the City of Hamilton, Lakeview Development Ltd. and Citibank Canada.

Pursuant to Section 4.04(b) of the Development Agreement dated November 19, 1981, as amended, the Review Authority hereby certifies that the Improvements have been completed in conformity with the Final Working Drawings and Specifications (with such Modifications, if any, as have been approved under the Development Agreement) and the Developer has installed the furnishings, fixtures and equipment and has otherwise complied with the opening requirements as set out in Schedule "K" to the Development Agreement. The terms used in this Certificate shall be ascribed the same meanings as set forth in the Development Agreement. This Certificate is, and is intended to be a Certificate of Completion or a Final Completion Certificate as contemplated by the terms of Section 4.04(b) of the Development Agreement and discharges the Developer from each and every obligation, covenant, agreement and undertaking contained in the Development Agreement except for the obligations contained in the Ground Lease dated May 3, 1983 between The Corporation of the City of Hamilton and Lakeview Development Ltd., as amended from time to time, and the obligation to enter into and deliver to City of Hamilton a registrable Pedestrian Bridge Agreement as attached hereto as Schedule "A". The Review Authority hereby confirms that there are no further Improvements to be done pursuant to the Development Agreement.

DATED this       day of       1989.

---

Mr. D.W. Vyce  
Co-Ordinator  
Lloyd D. Jackson Square  
Chairman,  
Review Authority

---

Alderman W.M. McCulloch  
Member of  
Review Authority





ESTOPPEL CERTIFICATE

TO: GGS HOTEL HOLDINGS CANADA INC. and GGS CO. LTD.

RE: Ground Lease dated the 3rd day of May, 1983, registered as Instrument No. 271066 CD, as amended by certain agreements including, Agreements dated May 3, 1983, July 29, 1983, August 21, 1985, and November 26, 1986, all between The Corporation of the City of Hamilton and Lakeview Development Ltd. as further amended by Agreement dated November 1, 1984 between The Corporation of the City of Hamilton, Lakeview Development Ltd. and Citibank Canada, by Agreement dated March 15, 1989 between The Corporation of the City of Hamilton, Lakeview Development Ltd., GGS Hotel Holdings Canada Inc., and King Street Hamilton Hotel Limited Partnership and by Agreement dated March 31, 1989 between The Corporation of the City of Hamilton, Lakeview Development Ltd., First Phase Civic Square Limited, Second Phase Civic Square Limited, Fourth Phase Civic Square Limited and King Street Hamilton Hotel Limited Partnership

(the "Ground Lease")

Development Agreement dated the 19th day of November, 1981, registered as Instrument No. 292836 CD, as amended by certain agreements including, Agreements dated August 3, 1982, May 3, 1983, July 29, 1983, August 1, 1985, August 21, 1985, August 25, 1985 and December 1, 1986, between The Corporation of the City of Hamilton and Lakeview Development Ltd., as further amended by Agreement dated November 1, 1984 between The Corporation of the City of Hamilton, Lakeview Development Ltd. and Citibank Canada, as further amended by Agreement dated March 15, 1985 between The Corporation of the City of Hamilton, Lakeview Development Ltd., GGS Hotel Holdings Canada Inc. and King Street Hamilton Hotel Limited Partnership and as further amended by Agreement between The Corporation of the City of Hamilton, Lakeview Development Ltd., First Phase Civic Square Limited, Second Phase Civic Square Limited, Fourth Phase Civic Square Limited, and King Street Hamilton Hotel Limited Partnership dated March 31, 1985

(the "Development Agreement")

The Corporation of the City of Hamilton hereby certifies as of this date pursuant to Section 5.13 of the November 19, 1981 Development Agreement, and pursuant to Section 22.07 of the May 3, 1983 Ground Lease, both as amended as hereinbefore set out, as follows:

1. That Lakeview Development Ltd. is in possession of the land described in the Ground Lease and took possession thereof on the 3rd day of August, 1983, and has paid rent in accordance with the provisions of the Ground Lease to March 31, 1989 and that The Corporation of the City of Hamilton does not hold any prepaid rent, letter of credit or deposit or any amount whatsoever, with respect thereto.
2. That the Ground Lease and the Development Agreement have not been amended except as set out above and that such agreements continue in full force and effect.
3. That the Ground Lease and the Development Agreement are in full force and effect and Lakeview Development Ltd. is not, as of the date hereof, to the knowledge of The Corporation of the City of Hamilton, in default under the Ground Lease and/or the Development Agreement.
4. That The Corporation of the City of Hamilton hereby acknowledges and accepts that this Certificate shall be relied upon by GGS Co. Ltd. and GGS Hotel Holdings Canada Inc.

5. That there are obligations of the Developer to register outstanding agreements under the Development Agreement and Ground Lease as follows:

- (a) Release Agreement of Citibank Agreement dated November 1, 1984;
- (b) Banquet Facilities Amending Agreement dated December 1, 1986;
- (c) Extension of Time and Set Back Amending Agreement dated August 1, 1985;
- (d) Hotel Management Amending Agreement dated as of March 31, 1989;
- (e) Pedestrian Bridge Agreement dated as of March 28, 1985;
- (f) Notice of Sublease dated May 1, 1985 between Fourth Phase Civic Square Limited, as sublessor and Lakeview Development Ltd. et al, as sublessees; and,
- (g) Rent Adjustment Agreement dated November 26, 1986.

DATED this                      day of April, 1989.

THE CORPORATION OF THE CITY OF  
HAMILTON

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

CERTIFICATE

TO: GGS HOTEL HOLDINGS CANADA INC. and GGS CO. LTD.  
c/o McMILLAN, BINCH  
Barristers and Solicitors  
P.O. Box 38  
Royal Bank Plaza  
South Tower  
Toronto, Ontario  
M5J 2J7

AND TO: LAKEVIEW DEVELOPMENT LTD.  
185 Carlton Street  
6th Floor  
Winnipeg, Manitoba  
R3C 3J1

AND TO: McMILLAN, BINCH  
Barristers and Solicitors  
P.O. Box 38  
Royal Bank Plaza  
South Tower  
Toronto, Ontario  
M5J 2J7

AND TO: McJANNET RICH  
5th Floor  
185 Carlton Street  
Winnipeg, Manitoba  
R3C 3J1

RE: An Agreement (the "Original Development Agreement") dated September 3, 1970 between The Corporation of the City of Hamilton (the "City"), Greater Hamilton Developers Limited (the "Developer") registered as Instrument No. 199965 AB against title to the property (the "Property") on which the Sheraton Hamilton Hotel is situated, as further described in Schedule "A" attached hereto, as amended by agreements dated November 25, 1970, November 7, 1972, November 14, 1975, July 7, 1978 and September 1, 1980.

---

The Review Authority as defined in the Original Development Agreement hereby confirms that the Developer has no outstanding obligation whatsoever in, or with regard to the Property under the Original Development Agreement, save as is set out in the Interface Agreement or contained in the Ground Lease between the City and Lakeview Development Ltd. The Review Authority further confirms and acknowledges that all the terms, conditions, covenants, agreements and undertakings contained in the Original Development Agreement have been fully satisfied and that there are no further obligations, covenants, agreements and undertakings, whether financial or otherwise, pursuant to the Original Development Agreement, which bind the Property or any present or future lessee of the Property, save as set out herein.

The Review Authority hereby acknowledges and accepts that this Certificate shall be relied upon by GGS Hotel Holdings Canada Inc. and GGS Co. Ltd.

DATED this                      day of                      , 1989, in the City of Hamilton,  
Province of Ontario.

---

Mr. D.W. Vyce,  
Co-Ordinator  
Lloyd D. Jackson Square  
for the Review Authority





SCHEDULE "A"

Part of Lots 1 and 2 and Part of the unnumbered lot in Block 1,  
Part of Lots 1 and 2 and Part of the unnumbered lot in the Block  
bounded by King, Park, Market and MacNab Streets, all according  
to David Kirdendall Survey registered in the Land Registry  
Office for the Registry Division of Wentworth as Plan No. 39;  
and Part of Park Street immediately east of the said Block 1  
(said Park Street now closed by the City of Hamilton By-Law No.  
81-14 dated December 9, 1980 and registered in the said Land  
Registry Office as Instrument No. 174954 C.D.) and which said  
parcel may be more particularly described as all of Part 1  
according to a reference plan received and deposited in the said  
Land Registry Office as Plan 62R-7454. Registered as Parcel 1-2  
in the leasehold register for Section W-39(c).



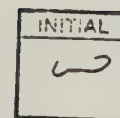
SCHEDULE "A"

(Attached to and forming part of the RELEASE AGREEMENT dated May 12, 1986 among CITIBANK CANADA, THE CORPORATION OF THE CITY OF HAMILTON and LAKEVIEW DEVELOPMENT LTD.)

LEASEHOLD LAND

Part of Lots 1 and 2 and the unnumbered lot in Block 1, Parts of Lots 1 and 2 and the unnumbered lot in the Block bounded by King, Park, Market and MacNab Streets all according to DAVID KIRKENDALL SURVEY registered in the Land Registry Office for the Registry Division of Wentworth as Plan No. 39; and Part of Park Street immediately east of the said Block 1 (said Park Street now closed by the City of Hamilton By-Law No. 81-14 dated December 9, 1980 and registered in the said Land Registry Office as Instrument No. 174954 C.D.) and which said parcel may be more particularly described as all of Part 1 according to a reference plan received and deposited in the said Land Registry Office as Plan 62R-7454.

Registered as Parcel 1-2 in the leasehold register for Section W-39(c).



*fill*





NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration paid by each of the parties hereto to the other, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. Unless there is something in the subject matter inconsistent therewith or unless otherwise defined herein, all capitalized expressions used herein shall have the meaning ascribed thereto in the Citibank Agreement.

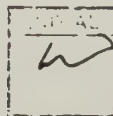
2. All rights and obligations of the Bank under the Citibank Agreement ceased <sup>Notwithstanding anything to the contrary contained in this Agreement</sup> ~~to be~~ <sup>including</sup> ~~from and after~~ <sup>without limitation</sup> August 23, 1985. <sup>Paragraph 9 here.</sup>

3. The Bank hereby specifically acknowledges to the City that Sections 4.01 to 4.04 (inclusive) and Section 6.02 of the Citibank Agreement shall not be enforceable by the Bank against the City or against Lakeview. (C)

4. The Bank shall no longer be (as set out in Section 6.02 of the Citibank Agreement) the financial institution designated to hold insurance proceeds, which designation is provided for in Section 4.06(g)(v) of the Ground Lease.

5. The City and Lakeview jointly and severally remise, release and forever discharge the Bank of and from all manner of actions, causes of action, proceedings, judgments, debts, liabilities, losses, covenants, contracts, agreements, rights, claims and demands (hereinafter collectively called "Claims") whatsoever which either or both of the City and Lakeview and their respective successors and assigns ever had, now have or may hereafter have for or by reason of any cause, matter or thing whatsoever existing up to the present time or hereafter arising out of or from the Citibank Agreement.

6. The City and Lakeview acknowledge that the release contained in paragraph 5 above is intended to extend to, and does extend to, Claims now known to exist and Claims not now known or suspected to exist, even if the knowledge or suspicion of which would have materially affected the decision of either or both the City and Lakeview to execute and deliver this Release Agreement.



gdl

7. The Bank hereby remises, releases and forever discharges the City and Lakeview of and from all Claims whatsoever which the Bank and its successors and assigns ever had, now have or may hereafter have for or by reason of any cause, matter or thing whatsoever existing up to the present time or hereafter arising out of or from the Citibank Agreement.

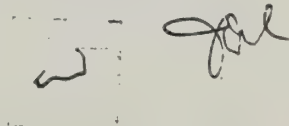
8. The Bank acknowledges that the release contained in paragraph 7 above is intended to extend to, and does extend to, Claims now known to exist and Claims not now known or suspected to exist, even if the knowledge or suspicion of which would have materially affected the decision of the Bank to execute and deliver this Release Agreement.

9. (a) Lakeview and the City hereby agree that only the terms, covenants and conditions of the Citibank Agreement which are set out in the following list shall continue in full force and effect as between, and shall be binding upon, and enforceable by each of, Lakeview and the City:

<u>Sections:</u> 1.02	7.01
1.03	7.02
3.01(second paragraph only)	7.03
4.02	7.04
5.01(except for last sentence)	7.05
6.03	7.06
6.04	7.07
6.06(except re: delivery of	7.08
certificate to Bank)	7.09
6.08	7.10
6.09	
6.10	

(b) The City, Lakeview and the Bank agree that the other terms, covenants and conditions of the Citibank Agreement that are not listed in subparagraph (a) above shall cease and be of no further force and effect among the City, Lakeview and the Bank.

10. The provisions of this Release Agreement shall enure to the benefit of and be binding upon each of the parties hereto and their respective successors and assigns.



11. Lakeview shall register on title to the Leasehold land described in Schedule "A" attached hereto, this Release Agreement forthwith after the execution of this Release Agreement by the parties hereto and the parties hereto covenant to do or complete all such acts, matters, deeds, assurances and things as may be reasonably requisite for the registration of this Release Agreement.

12. This agreement may be executed in several counterparts each of which when executed by the parties shall be deemed to be an original and such counterparts shall together constitute one and the same instrument.

13. Attached hereto as Schedule "B" is a true copy of the November 1, 1984 Citibank Agreement entered into among the City, Lakeview and Citibank.

IN WITNESS WHEREOF the parties hereto have executed this Agreement ~~as of the day, month and year hereinabove written.~~

March

, 1989. (2)

CITIBANK CANADA

PER: \_\_\_\_\_

Name: Gerry Manno  
Title: Vice-President

I have authority to bind the corporation  
PER: \_\_\_\_\_

THE CORPORATION OF THE CITY OF HAMILTON

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

LAKEVIEW DEVELOPMENT LTD.

PER: \_\_\_\_\_

KEITH LEVIT SECRETARY

PER: \_\_\_\_\_

DAEWIRWIN CONTROLLER







A Company Introduction

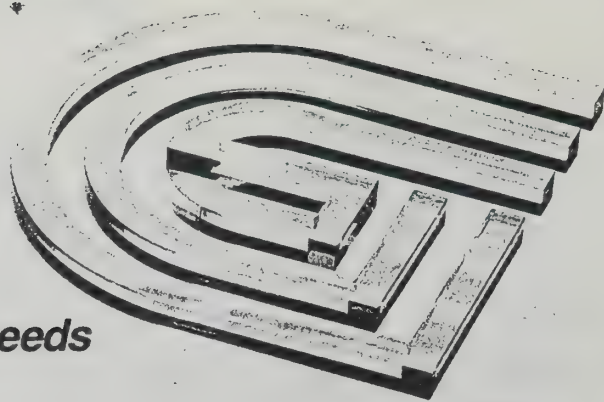
# EXHIBIT "A"

**G**

**G**

**S**





## **Meeting a Wide Range of Needs —a Message from GGS**

Since its inauguration in 1968 as Ginza Golf Service Co., Ltd., GGS has shown consistent improvement in performance and achieved remarkable growth.

Beginning with the trading of golf club memberships, a field with few parallels outside Japan, GGS proceeded to expand its scope of activities to include the importing and wholesaling of precious stones and corporate financing. Currently, GGS is actively pursuing development of business both in Japan and abroad, and has earned very high evaluations for its unique services as a non-bank in the Japanese financial world.

This growth has been enhanced by rapid progress in the computerization and systematization of business operations and administration within the company. This, along with efforts to sensitively grasp and anticipate changes in economies and markets, has enabled us to continually challenge new fields of business.

Credit is also due to the many customers and other people concerned, without whose special patronage and warm support such extensive development within a period of less than 20 years would never have been possible.

GGS is currently engaged in the development of a system—breaking down business operations into decision-making and the information required therefore—that will form the basis for the construction of a new management system, which in turn will greatly increase efficiency. Developments such as these are rapidly bringing about the more systematic use of products, capital, and personnel.

On the international scene, GGS is aggressively promoting investment and finance activities through its foreign bases, GGS Hong Kong and GGS Hawaii.

In the U.S., the performance and potential of GGS were recognized in 1983 when the company was invited to join the National Commercial Finance Association (NCFA). Earning the favor of many of its members and engaging in a wide variety of business associations, I am now serving as one of the directors of this influential American institution.

In 1984, GGS adopted its present name in reflection of its expanded range of business activities. Resolved to continue its heretofore bounding growth, GGS continues to abide by its founding spirit of "Anticipating changes in the needs of society." In its striving toward a new corporate culture, GGS is determined to maintain its steady progress.

Mitsuru Iwasaki  
President

## Corporate Outline

Company name: GGS Co., Ltd.  
 Founded: May 29, 1968  
 Capital: ¥170,000,000  
 Authorized stock: 658,000 shares  
 Issued stock: 334,500 shares  
 Number of shareholders: 45  
 Number of employees: 150

### Directors and auditors:

<i>President</i>	Mitsuru Iwasaki
<i>Executive Managing Director</i>	Masaharu Fuma
<i>Director</i>	Mineko Iwasaki
<i>Director</i>	Sydney Ichiro Hashimoto
<i>Director</i>	Takao Saegusa
<i>Director</i>	Yasutaka Kano
<i>Auditor</i>	Shinji Endo
<i>Auditor</i>	Yoshio Komatsu

Affiliated companies: GGS Hong Kong Co.  
 GGS HI Inc.  
 Ginza Corporation Co., Ltd.  
 Capital tie-ups: Nishi-Nihon Golf Service Co., Ltd.

### Member organizations:

National Commercial Finance Association (U.S.)  
 Kanto Golf Club Membership Business Cooperative  
 Kansai Golf Club Membership Business Cooperative  
 Chubu Golf Club Membership Business Cooperative  
 Tokyo Finance Association  
 Aichi Finance Association  
 Osaka Finance Association



Head office (Shimbashi Ekimae Building)

## Corporate History

- 1968— Establishment of Ginza Golf Service Co., Ltd.  
 Capital: ¥5 million
- 1969— Transfer of main office to its present location  
 (2-20-15, Shimbashi, Minato-ku, Tokyo)
- 1970— Start of the computerization of operations,  
 introduction of an NEC 1240 computer,  
 development of a system of records for golf club  
 membership trade and a golf diagnostic system  
 — Business cooperation with Diners Club of Japan  
 on membership sales
- 1971— Beginning of exchange with the Southern  
 California Golf Association
- 1972— Capital expansion to ¥20 million  
 — Introduction of USGA golf handicap system by  
 U.S. firm IDC  
 — Business tie-ups for golf club membership sales  
 with Japan Credit Bureau, Million Card Service,  
 Diamond Credit, and Sumitomo Credit.
- 1973— Establishment of Nagoya Office  
 — Capital expansion to ¥40.5 million
- 1975— Introduction of HITAC 8150 computer
- 1976— Upgrading of Nagoya Office to Branch status
- 1979— Establishment of Ginza Golf Service Shibuya Co.,  
 Ltd.
- 1982— Merger with Ginza Golf Service Shibuya Co., Ltd.  
 Capital expansion to ¥82.25 million
- 1983— Lending balance breaks ¥10 billion plateau  
 — Introduction of IBM System 38 and promotion of  
 on-line communications with the new system  
 — Membership in U.S. National Commercial Finance  
 Association  
 — Commencement of operations at GGS Hong Kong  
 Co.
- 1984— Introduction of second IBM System 38 and an  
 Olivetti S2250, start of network with golf shops  
 — Establishment of jewelry showroom, development  
 of new sales and loan system for jewelry  
 — Establishment of Osaka Office  
 — Name change to GGS Co., Ltd.
- 1985— Capital expansion to ¥170 million
- 1986— Transfer of Nagoya Branch to Toyoshima Building  
 (2-15-15, Nishiki, Naka-ku, Nagoya)  
 — Commencement of operations at GGS HI Inc.  
 (Hawaii)



# ***A Positive Approach to Potential Markets —GGS Business Activities***

GGS is characterized by its bold advances into new service industries, centering around the golf club membership trade and finance. As GGS continually emphasizes mobility, originality, and flexibility based on computers and consulting, it has divided its business department into nine specialized sections.

## **Section 1 (Product and market development)**

Analyzes changes in markets and economies to develop new products, sales methods, and sales routes. These new developments are then tested in the market, systematized, and judged for profitability. If the go-ahead is given, the developed product is passed on to Section 2.

Presently, this section is engaged in the expansion of a computer network system between golf shops and golf club membership dealers.

## **Section 2 (Product and system stabilization)**

Continuing work with the new products and sales methods developed by Section 1, this group formulates a structure that can be used systematically, enhances its efficiency and develops product salability. It also clarifies outlooks for improved profitability through greater quantity and higher quality.

Products and systems developed in this section are then transferred according to their content to one of the following sections, the "foot soldiers" of the GGS sales force.

## **Section 3 (Golf club membership trade)**

Conducts sales of golf club memberships to individuals and corporations by researching the latest trends in the golf club membership market to provide customers with up-to-the-minute information.

This section is currently involved in the construction of a computerized on-line network between golf shops and golf club membership dealers to be used as part of a general sales network. In addition, long-term cooperation with selected businessmen is being promoted as scrap-and-build proceeds in golf-related industries.

## **Section 4 (Jewelry sales and jewelry-secured financing)**

Involved in the direct import and wholesaling of diamonds, the use of precious stones, particularly diamonds, as collateral, and the development of financing programs that meet the capital needs of the jewelry industry.

In addition to the promotion of business activities including both distribution functions (through a jewel display shop located at the main office) and financing, this section gathers information from the foreign jewel industry in its work towards a more active circulation market.

## **Section 5 (Golf accessory industry financing and related business)**

Provides financing to all sectors of the golf industry, including golf accessory manufacturers, wholesalers,

importers/exporters, golf shops, driving ranges, and sporting goods stores. The history of this industry, which has developed in response to the growing number of golf courses and golfers in Japan, is a short one. This section therefore offers business consulting, which includes investment in the development of new products, purchase, sales, inventory management, and shipping systems; and provides a wide range of financing programs suited to customer needs.

## **Section 6 (Golf club membership-secured lending)**

Provides financing to members possessing golf club memberships using those memberships as collateral. Since customers come to GGS from a wide variety of industries, this section fills the role of providing working capital and meeting the other cash needs of businesses and individuals. In addition, it carries out active business expansion through the development of unique lending programs by the full use of an electronic data processing (EDP) system in order to respond to the wide range of customer needs.

## **Section 7 (Real estate-secured financing)**

Carries out financing services in which real estate is used as collateral and stimulates financing needs by providing real estate-related industries with useful money information.

Since real estate is the most valuable asset in Japan, real estate collateral finance is a highly competitive field. But GGS has developed its own unique lending program different from those provided by the banks.

In the arena of international real estate, this section is actively promoting investment and collateral financing by strengthening cooperative ties with related industries both in Japan and abroad.

## **Section 8 (Consumer lender financing)**

In order to support the healthy development of consumer lenders in Japan, this section forecasts future industry developments and provides capital and information to allow the growth of related corporations in desired directions.

It also provides financing by rediscounting loan receivables, taking other assets held by retail bankers as collateral, and making critical judgments on financial condition and structure to maintain the bonds.

## **Section 9 (Negotiable securities-secured financing)**

Analyzes negotiable securities issues and circulation market conditions with a unique system to develop financing through an understanding of customer needs and fair judgments on the value of stocks and bonds.

By offering financing that makes full use of the functions of negotiable securities while at the same time staying attuned to trends in the stock market and economy, this section helps to ensure stable earnings.

# EXHIBIT "B"

Otemon Audit Corporation

March 18, 1989

City of Hamilton Planning and  
Development Committee  
Hamilton, Ontario  
Canada

Dear Sirs,

We are the auditors of GGS Co., Ltd. and conducted the audit of the balance sheet and related statements of GGS Co., Ltd. as of March 31, 1988.

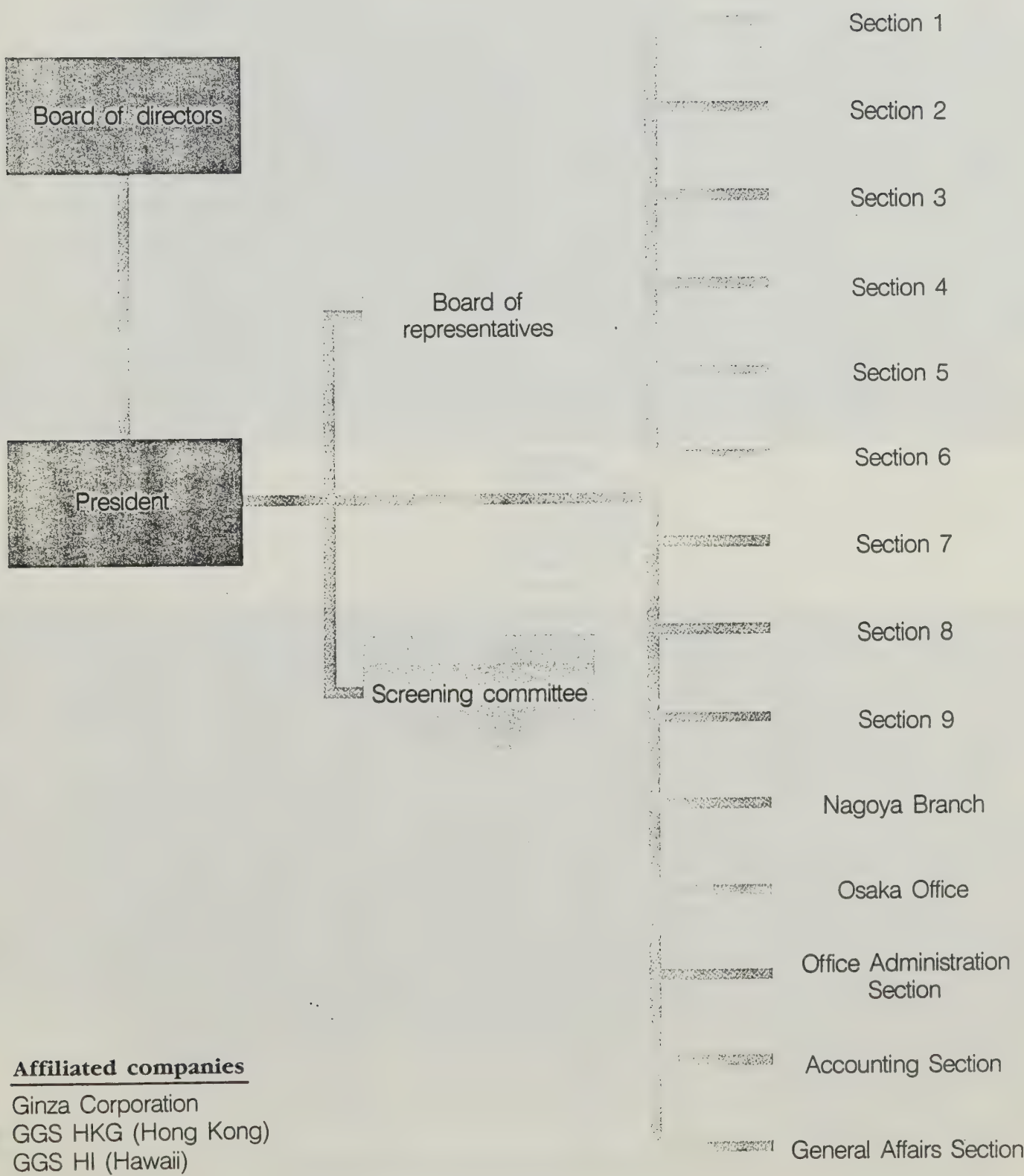
As the auditors of GGS, we are generally familiar with the financial position of the company and can confirm that although the audit for the current fiscal year is not complete, from our present investigation we are not aware of any material adverse change in its financial affairs since March 31, 1988.

Yours truly,

*Otemon Audit Corporation*  
Otemon Audit Corporation



Organizational Structure







**Head Office** 2nd Fl., Shimbashi Ekimae Bldg. No. 1, 2-20-15, Shimbashi, Minato-ku, Tokyo 105, Japan  
Tel. (03)572-5244

**Nagoya Branch** 12th Fl., Toyoshima Bldg., 2-15-15, Nishiki, Naka-ku, Nagoya 460, Japan  
Tel. (052)204-7311

**Osaka Office** 11th Fl., Osaka Ekimae Bldg. No. 2, 1-2-2, Umeda, Kita-ku, Osaka 530, Japan  
Tel. (06)348-1401



# EXHIBIT "C"

CGS HOTEL HOLDINGS CANADA INC.

PRO-FORMA BALANCE SHEET

MARCH 31, 1989

(unaudited)

(see Compilation Report)

## *Price Waterhouse*



March 21, 1989

### COMPILATION REPORT

To the Directors of  
GGS Hotel Holdings Canada Inc:

We have reviewed, as to compilation only, the accompanying pro-forma balance sheet of GGS Hotel Holdings Canada Inc. as at March 31, 1989 which has been prepared to reflect the proposed purchase of certain assets of the Sheraton Hamilton Hotel. In our opinion, the pro-forma balance sheet has been properly compiled to give effect to the proposed transaction and the assumptions described in the notes to the pro-forma balance sheet.

*Price Waterhouse*

Chartered Accountants

GGH HOTEL HOLDINGS CANADA INC.

PRO-FORMA BALANCE SHEET - MARCH 31, 1989  
(Note 1)

ASSETS

Current asset:

Supplies inventory	\$ 285,000
--------------------	------------

Other assets:

Ground lease	1
Leases, contracts and accounting records	<u>1</u>
	<u>2</u>

Fixed assets:

Furniture and equipment	2,719,998
Building	<u>31,280,000</u>
	<u>33,999,998</u>
	<u>\$34,285,000</u>

LIABILITY AND SHAREHOLDERS' EQUITY

Liability:

Unsecured advance due to GGS Co., Ltd.	\$24,285,000
--	--------------

Shareholders' equity (Note 2):

Authorized-

Unlimited number of common shares

Issued and fully paid-

10,000 common shares	<u>10,000,000</u>
	<u>\$34,285,000</u>



GGH HOTEL HOLDINGS CANADA INC.

NOTES TO PRO-FORMA BALANCE SHEET  
MARCH 31, 1989

1. Proposed purchase and basis of preparation:

As of December 2, 1988, an agreement was reached as to the purchase and sale of certain property, assets and rights owned by Lakeview Development Ltd. and King Street Hamilton Hotel Limited Partnership and used in connection with the hotel known as the "Sheraton Hamilton Hotel", subject to certain conditions precedent to closing.

The pro-forma balance sheet contemplates that closing will take place on March 31, 1989. The asset values reflected therein are as stipulated in the December 2, 1988 agreement, other than supplies inventory where the December 31, 1987 balance was used as an estimate for pro-forma purposes.

2. Incorporation and ownership:

GGH Hotel Holdings Canada Inc. was incorporated on January 11, 1989 under the provisions of the Ontario Business Corporations Act.

The owner intends to subscribe for 10,000 common shares for \$10 million cash consideration on or before closing.

**GGG CO., LTD**2F, 1-Gokan, Shimbashi-Ekimae-Bldg., 2-20-15, Shimbashi, Minato-ku, Tokyo, Japan  
Phone: 03(572)5244 Fax: 573-6068**EXHIBIT "D"**

March 18, 1989

City of Hamilton Planning and  
Development Committee  
Hamilton, Ontario  
Canada

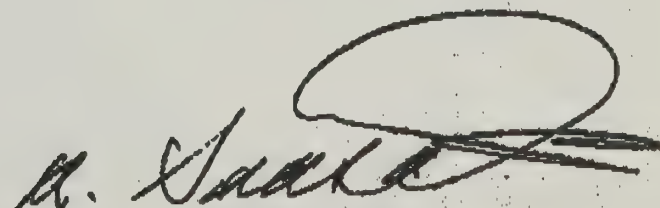
Dear Sirs,

As you are aware, we have agreed on behalf of our wholly owned subsidiary GGS Hotel Holdings Canada Inc. ("GGS Canada") to purchase the Sheraton Hamilton Hotel from Lakeview Development Ltd. and King Street Hamilton Hotel Limited Partnership.

We wish to confirm to you that we will be providing Cdn\$10,000,000 in equity to GGS Canada. It is our intention to retain this capital investment in GGS Canada.

We will be pleased to provide you any further information which you may require.

Yours truly,



GGG CO., LTD.



**McMILLAN, BINCH  
BARRISTERS & SOLICITORS**

**EXHIBIT "E"**

P.O. Box 38  
South Tower  
Royal Bank Plaza  
Toronto, Ontario M5J 2J7

MISSISSAUGA  
Mississauga Executive Centre  
Three Robert Speck Parkway  
Suite 800  
Mississauga, Ontario L4Z 2G5

Telephone: (416) 865-7000  
Telex: 06-22317 (MCBINCH TOR)  
Fax: (416) 865-7048  
CBANET MC.BINCH

Telephone: (416) 896-1850  
Telex: 06-22317 (MCBINCH TOR)  
Fax: (416) 566-2029  
CBANET MC.BINCH

Our Ref. No. **#0026534** Direct Line **865-7157**

**March 23, 1989**

DELIVERED BY COURIER

City of Hamilton  
Treasury Department  
City Hall  
71 Main Street West  
Hamilton, Ontario  
L8N 3T4

Attention: Mr. Edward C. Matthews,  
Treasurer

Dear Sirs:

Re: Sheraton Hamilton Hotel

Accompanying this letter are three copies of the unaudited Pro-Forma Balance Sheet as of March 31, 1989 for GGS Hotel Holdings Canada Inc. ("GGS Canada") prepared by Price, Waterhouse.

We confirm our instructions from GGS Co., Ltd., the parent to GGS Canada that GGS Canada will be capitalized with not less than \$10,000,000 equity.

Yours truly,

*W. David McCordic*

W. David McCordic

WDM/sn  
Encls.

TREASURY		
MAR 23 1989		
ROUTE	REC'D	
E.C.M.		
I.R.H.		
T.W.D.		
N.R.A.		
J.G.H.		
T.B.		
D.D.		





# **Administration and Support Department**

## **Office Administration Section**

Involved in the methodical collection and analysis of the information and statistics necessary for company operations and department administration decision-making. In addition to system improvement and development for more rational and efficient operating procedures, this section works to check and systematically carry out smooth operations in each department and to perform guidance administration.

## **Accounting Section**

Involved in both the procurement of funds and their efficient use and management, this section acts as the focal point for smooth processing of everything from the company budget to the balancing of the books. In addition, creation of a fund procurement system using national bonds has provided higher returns than expected. The section also promotes international operations in areas such as management control of foreign affiliates and foreign investment.

## **General Affairs Section**

Engaged in the administration of personnel, labor, wages, documents, and stock along with pension programs, supplies, and public relations. In addition, this section is devoting its energies to employee training and education. It also works to maintain a congenial and stimulating company environment.

## **Domestic Branches**

### **Nagoya Branch**

Established in 1973, this office handles golf club membership sales and various financing activities, primarily in the Nagoya region. It presently comprises a sales department, having three sections, and an administrative department, with one. The first of the sales departments parallels Section 3 at the main office; the second, Section 6; and the third, Section 7.

### **Osaka Office**

Formed in 1984 as a base for operations in the Kansai area, its main activity is the buying and selling of golf club memberships. Currently, it is engaged in laying a foundation that will allow it to support the same functions as the Nagoya Branch.



Executive management training session



At the head office



## ***Computerized Operations —the GGS EDP System***

## ***The Nurturing of Dependable, Talented People Active in the International Community —GGS Employee Education***

From early in its development, GGS has supported the introduction of computers in its drive for efficient operations and rationalization of management. At present, GGS maintains a variety of EDP systems uniquely suited to the needs of GGS and its customers. Based upon an IBM System 38, the application of these systems has proved very effective. Following are some representative examples:

1. Customer Information Management System  
Handles all information on current and prospective customers.
2. Golf Club Membership Sales System  
Total processing of information ranging from promotion of golf club membership sales to market analysis.
3. Jewelry Sales System  
An operation system dealing with everything from the purchasing of precious stones to their final sales.
4. Loan System  
Total processing of information ranging from promotion of lending to market analysis.
5. Operation and Time Management System  
A management control system that breaks down business operations into information and processing time in an effort to achieve personal work efficiency.
6. Product Profit Management System  
A management control system for cost control.
7. Accounting System  
An operation system for account management.
8. Decision-Making Support System (DSS)  
A management support system for company and department management.

GGS works on the principle that a company is a joint body comprising a group of individuals, each giving his utmost. With the nurturing of talented people as one of the most important principles of management, GGS puts a great deal of effort into education and training in its drive to foster employees' talents and abilities.

In addition to improving the efficiency and productivity of business operations through various forms of training and education appropriate to each level, the training of talented people with a broad range of knowledge and an international outlook is being actively planned and promoted.

As one step in this process, GGS is carrying out education in a variety of forms, including the invitation of university professors to hold lectures and the dispatching of employees for training abroad. In addition, GGS is raising the quality of its personnel through actual on-the-job training for general employees and organizational operation management education for middle and upper management.



**Computer room**



**The employees' fitness club**



**Education of new employees**

AMENDING AGREEMENT dated this 1st day of December, 1986.

B E T W E E N:

THE CORPORATION OF THE CITY OF HAMILTON,

Hereinafter called the "City",

OF THE FIRST PART

- and -

LAKEVIEW DEVELOPMENT LTD.,

Hereinafter called "Lakeview".

OF THE SECOND PART

WHEREAS:

(a) Lakeview and the City have entered into and registered on title to the leasehold land described in Schedule "A" attached hereto, the following agreements:

Development Agreement, dated November 19, 1981, registered as Instrument No. 292836 C.D.;

Agreement dated August 3, 1982, registered as Instrument No. 292837 C.D.;

Closing Agreement dated May 3, 1983, registered as Instrument No. 292838 C.D.; and,

Agreement dated July 29, 1983, registered as Instrument No. 292840 C.D.

(b) The City, as Landlord of the land described in Schedule "A" attached hereto, has entered into a Ground Lease dated May 3, 1983 with Lakeview as Tenant (registered as Instrument No. 271066 C.D.), which Lease was amended by further Agreement dated July 29, 1983, registered as Instrument No. 292840 C.D. and a further Agreement dated May 3, 1983 (Closing Agreement), registered as Instrument No. 292838 C.D.

(c) The Development Agreement and the Ground Lease have both been further amended by:

(i) an Agreement (the "Citibank Agreement") dated November 1, 1984, among Lakeview, Citibank Canada and the City, being attached as Schedule "B" to a Release Agreement among the same parties registered as Instrument No. ; and,

(ii) an Agreement dated August 21, 1985, entered into between Lakeview and the City and registered as Instrument No. 221565 L.T.

(d) Lakeview has requested the City to amend by this Agreement the Hotel Development Criteria on Hotel banquet facilities set out in Paragraph (b) of Schedule "C" attached to and forming part of the Development Agreement registered as Instrument No. 292836 C.D.

NOW THEREFORE in consideration of the sum of ONE DOLLAR (\$1.00), now paid by each of the parties to the others, (the receipt of which is hereby acknowledged), the parties hereto agree as follows:





- (c) be used in common with such other users as may now be or hereafter be permitted from time to time by the City, including, without limiting the generality of the foregoing, the City, its Trade Centre/Arena, Hamilton Entertainment and Convention Facilities Inc. ("H.E.C.F.I."), the Public Library Board, The Hamilton Farmer's Market, Second Phase Civic Square Limited and Fourth Phase Civic Square Limited;
- (d) be used in a reasonable manner, consistent, appropriate and taking into consideration the use and requirements of all other users and which shall not unnecessarily or unreasonably interfere with the use of the new truck route by other users; without limiting the generality of the foregoing, Lakeview covenants to the City that Lakeview's use of the new truck route shall not unnecessarily or unreasonably interfere with the business of H.E.C.F.I., the Public Library Board or the Hamilton Farmers' Market;
- (e) be controlled in such reasonable manner as may be agreed upon by the City, Fourth Phase and Lakeview;
- (f) be in compliance with all parliamentary and legislative enactments and with all by-laws and regulations of the City;
- (g) be subject to all rights now or that may hereafter be vested in or reasonably required by the City, The Regional Municipality of Hamilton-Wentworth (herein called the "Region"), or in or by any gas, electric, telephone, telegraph, cable T.V. or electric light company, for the operation, maintenance, replacement and repair of the new truck route and of the Copps Coliseum or the adjacent streets including without limitation, the construction, repair, replacement or removal of sewers, culverts, drains, water or gas pipes or the placing of poles or wires (herein called "services"). The City expressly reserves to itself, to H.E.C.F.I. and to the Region the right to construct services or permit services to be constructed on, over, in, under and upon the new truck route and the right to temporarily close the new truck route from time to time to permit the operations contemplated herein; and
- (h) Lakeview covenants and agrees:
  - (i) that it will not bring upon the new truck route or any part thereof, any machinery, equipment, article or thing that by reason of its weight, size or use would in the opinion of the City (acting reasonably) damage the new truck route and will not at any time overload the new truck route by any machinery, equipment, article or thing, or by any act, neglect or misuse on the part of Lakeview or any of its servants, agents or employees or anyone for whom Lakeview is responsible in law. If such overloading shall occur and damage shall ensue therefrom, Lakeview shall forthwith repair the same or pay the City the cost of making good the same; and,

- (ii) that it will not operate, cause to be operated, use or consent to the use of the new truck route or any part thereof for any purpose other than the purposes permitted in this Agreement.

3. Lakeview acknowledges and agrees that the City, as owner of the new truck route:

- (a) may grant such further and other easements on, over, under, along and upon the said new truck route, in common with the use thereof by Lakeview, to the occupier of Part Six, the Lessee of Phase Four, the Lessee of Phase Two and the occupiers of Part Seven, subject to the payment of their share of the new truck route's costs; and,
- (b) Lakeview agrees that all Rules and Regulations and amendments and supplements thereto as are agreed upon from time to time by the City, Fourth Phase and Lakeview, shall be binding upon Lakeview. Lakeview agrees to comply with and observe such Rules and Regulations and amendments and supplements, and any failure by Lakeview to keep and observe the same shall constitute a breach of this Agreement in a manner as if the same were contained herein as covenants. Notice of such Rules and Regulations and amendments and supplements thereto, if any, shall be given to Lakeview by the City. No Rule or Regulation or amendment or supplement thereto shall contradict any provision of this Agreement.

4. The City shall operate, maintain and repair the new truck route and the costs thereof incurred by the City shall be borne, it is agreed, by the City, Lakeview, and Fourth Phase (and such other users permitted by the City) in such amounts as may be agreed upon from time to time. Without limiting the generality of the foregoing:

- (a) it is agreed that the City as owner and manager of the new truck route shall:
  - (i) manage the new truck route's maintenance, operation and repair and the costs thereof, including, heating, public utilities, ventilation, lighting, electricity (including that used for signs), fire protection equipment, snow removal, cleaning, security as well as salaries and other remuneration (including contributions towards the usual fringe benefits to and for the benefit of personnel and staff employed to provide the said maintenance, operation and repair), as well as the cost to the City of equipment and the rental of equipment and the cost of supplies used by the City in its maintenance, operation and repair.
  - (ii) invoice and collect each user's share of these costs;
- (b) it is agreed that the said costs of the new truck route (herein called the "new truck route's costs") to be shared amongst the users shall include

the costs or expenses for each of the matters in paragraph 4(a)(i) above (including an administration overhead charge equal to fifteen per cent (15%) of the new truck route costs);

- (c) Lakeview covenants to pay to the City Lakeview's share of the new truck route costs.

- 5. (a) All calculations made or referred to herein shall be made in accordance with generally accepted accounting principles and practices applied on a consistent basis. Subject as hereinafter provided, Lakeview agrees that any monies, expenses or charges which are to be paid by Lakeview to the City are due and payable within thirty (30) days of receipt of invoice and thereafter interest on any amount unpaid shall accrue at the then Bank of Montreal prime rate plus three percent (3%) per annum until paid. For the purposes hereof, "prime rate" means the floating annual rate of interest established from time to time by Bank of Montreal as the rate it will use to determine rates of interest payable by its borrowers on Canadian dollar commercial loans made by Bank of Montreal to such borrowers in Canada and designated by the Bank of Montreal as its prime rate.

- (b) If Lakeview shall fail or neglect to conform or comply with any of the terms, covenants and conditions contained in this Agreement (other than the covenants to pay sums required to be paid to the City by any provision of this Agreement), the City may notify Lakeview in writing of the default and Lakeview shall forthwith, after receiving such Notice, commence to and shall remedy the breach complained of in such Notice within 45 days if the breach is capable of being remedied within such period and otherwise shall prosecute same with diligence to completion in the shortest period reasonably possible after the date of receipt of such Notice.

- (c) If any sum of money required to be paid to the City by any provision in this Agreement shall not be paid by Lakeview when such payment is due, the City may forward Notice in writing of such failure to Lakeview and the failure shall be cured by Lakeview within thirty (30) days after the date of receipt of such Notice.

- (d) If Lakeview does not cure its breach as required, the City may take either or both of the following steps in addition to or together with any other remedy available at law to the City.

- (i) the City, on not less than sixty (60) days' notice to Lakeview, may terminate this Easement Agreement; or,

- (ii) such breach or default may, at the option of the City, be deemed to constitute a default of Lakeview under the Ground Lease and after it has then given the Notice of default pursuant



to the Ground Lease, the City shall have its rights under the Ground Lease.

6. (a) Notwithstanding that Lakeview shall have complied in all respects with its obligations under this Agreement, if the City wishes to establish an alternate new truck route, then, on not less than one (1) year's prior written notice to Lakeview given by the City, this easement agreement shall terminate as of the date stated in the notice.
- (b) In the event that this easement agreement is terminated in accordance with the preceding provision 6(a), the City shall provide for an alternate truck route or routes and a new easement therefor. Such alternate truck route may be temporary during construction (whether before or subsequent to the termination as aforesaid) and will be specifically determined thereafter, provided that during construction of an alternative truck route, a temporary truck route will be available.
- (c) Lakeview acknowledges and agrees that the new truck route (or portions of it) may be closed for such time as may be reasonably necessary for repairs, maintenance and alterations or due to unforeseen and unusual circumstances. In particular and without limiting the generality of the foregoing, the City shall be entitled to close the new truck route at any time or from time to time throughout the term hereof, upon at least seven (7) days' notice to Lakeview, for such temporary periods of time as may be reasonably necessary for the purpose of fulfilling its obligations and exercising its rights under this Agreement, and Lakeview shall not be entitled to claim from or be paid any amount by the City in respect of such closure or resulting inconvenience or expense.
- (d) Anything in this Agreement to the contrary notwithstanding, providing such cause is not due to the wilful act or omission of the City, the City shall not be deemed in default with respect to the performance or fulfillment of any of the terms, covenants and conditions of this Agreement if the same shall be due to any cause beyond the City's control or otherwise including, without limitation, strike, lockout, failure of powers, civic commotion, warlike operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material or service, or non-delivery of equipment, or through Act of God.
- (e) If the new truck route, including its doors, equipment and fixtures including the entrances thereto, the boilers, engines, pipes and other apparatus (or any of them) used for the purpose of heating or air conditioning or the ceiling, walls or floors of the new truck route or any part thereof become damaged or destroyed through the negligence, carelessness or misuse of Lakeview, its servants, agents, employees, contractors, licensees or any one for whom in law it is responsible, or through it or them in any way stopping up or injuring the heating

apparatus, water pipes, drainage pipes or other equipment or part of the site, the expense of the necessary repairs, replacements or alterations shall be borne by Lakeview who shall pay the same to the City forthwith upon demand.

7. Lakeview hereby agrees to indemnify and save harmless the City against and from all actions, causes of action, interest, claims, demands, costs, damages, expenses or loss which the City may bear, suffer, incur, become liable for or be put to by reason of any damage to property or injury or death to persons, by reason of, arising out of or in consequence of any breach, violation or non-performance by Lakeview or any one for whom Lakeview is responsible in law, of any provision of this Agreement, or by reason of or arising out of its use of the new truck route or any part thereof or by reason of or arising out of any fault, neglect or default by Lakeview or of any of its agents or employees or any other person or persons for whom Lakeview is responsible in law in or on the new truck route. The rights to indemnity contained in this paragraph shall survive any termination of this Agreement, anything in this Agreement to the contrary notwithstanding.

8. This Agreement may not be modified or amended, except by an instrument in writing of equal formality herewith.

9. No waiver by any of the parties hereto of the breach of any covenant or provision hereunder shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenants or provisions hereunder. No waiver shall be effective unless in writing.

10. This Agreement shall be registered on title to the land described in Schedules "A" and "B" by Lakeview forthwith after its execution by the parties hereto.

11. (a) This Agreement shall be binding upon and shall enure to the benefit of Lakeview, its successors and its assigns permitted by the Ground Lease and this Agreement shall bind and run with the leasehold land described in Schedule "B".

(b) In the event that the Ground Lease with Lakeview is terminated prior to the expiration of its term, this Easement Agreement shall also terminate.

(c) Lakeview covenants and agrees that it will not dispose, by way of sale, transfer and/or assignment, or in any other way whatsoever, of any of its interests in the leasehold land described in Schedule "B" and in this Agreement unless and until such disposition is in compliance with the following:

(i) Lakeview shall acquire from any such purchaser, transferee or assignee, on closing, their Undertaking to the City, satisfactory to the City, to abide by and be bound by all of the terms, covenants and conditions of this Agreement and without delivering such undertaking to the City. The Undertaking shall be in the form attached hereto as Schedule "C". Such undertaking after execution by the parties thereto shall forthwith be registered on title by the parties subsequent in

interest. Any such undertaking arising from a transfer by Lakeview shall not have the effect of releasing Lakeview from its obligations and liabilities under the terms of this Agreement. Any such undertaking arising from a transfer by the first assignee from Lakeview and any assignee subsequent thereto shall have the effect of releasing Lakeview and the assignor in question, as the case may be, from their respective obligations and liabilities under the terms of this Agreement, provided that the City has consented to such transfer or disposition in accordance with the requirements of the Ground Lease. Any disposition in contravention of this provision shall be null and void; and,

- (ii) For the purpose of this provision, any transfer or issue by sale, bequest, inheritance, operation of law or other disposition or by subscription from time to time of all or any part of the corporate shares of Lakeview which results, in the City's opinion, in any change in the present effective voting control of Lakeview, shall be deemed to be a disposition within the meaning of this provision, and the transferee shall be deemed to be the party or parties who acquire the said shares and the provisions herein regarding any disposition shall apply mutatis mutandis thereto.
  - (d) Lakeview covenants and agrees that it will not mortgage any of its Leasehold Land described in Schedule "B" nor this Easement Agreement without acquiring from any such Mortgagee its covenant to the City to comply with this Agreement in the same manner that the Mortgagee is required by sec. 16.01 of the Ground Lease to agree to comply with the Ground Lease. Such covenant shall form part of the Mortgagee's Agreement with the City entered into pursuant to sec. 16.01 of the Ground Lease.
  - (e) An Assignment or other disposition as aforesaid shall only release Lakeview or the Assignor, as the case may be, from its obligations contained in this Agreement if the City has consented thereto and the requirements hereof have been satisfied.
12. (a) This Agreement is subject to and shall not take effect until the following approvals are received:
- (i) the approval of the Ontario Provincial Minister of Municipal Affairs and Housing; and,
  - (ii) the approval of Canada Mortgage and Housing Corporation.
- (b) The City will apply for the approvals set out above and take all necessary steps for such applications. Lakeview agrees to cooperate in the obtaining of such approvals.
13. Time shall be of the essence of this Agreement.
14. (a) Any notice required or permitted to be given hereunder shall be sufficiently given if in writing and mailed by registered mail, postage prepaid, as follows:



If to Lakeview:

Lakeview Development Ltd.  
6th Floor  
185 Carlton Street  
Winnipeg, Manitoba  
R3C 3J1

Attention: The President

with a copy to:

Messrs. McJannet, Weinberg, Rich  
Barristers & Solicitors  
5th Floor  
185 Carlton Street  
Winnipeg, Manitoba  
R3C 3J1

Attention: Mr. J. T. McJannet

If to the City:

The Corporation of the City of Hamilton  
City Hall  
Attention: City Clerk  
71 Main Street West  
P.O. Box 2040  
Hamilton, Ontario  
L8N 3T4

- (b) Any notice mailed as aforesaid shall be deemed to have been given and received on the fifth (5th) business day following the date of such mailing. Any party hereto may at any time give notice to any one or more of the parties hereto by a notice in writing served personally upon an Officer of such party or parties or in the case of the City, upon an official of the City, in which case, notice shall be deemed to be given and received on the day of such personal service.
- (c) Any party may at any time give notice to the other parties of any change of address of the party giving such notice and from and after the giving of such notice, the address therein specified (so long as it is within the Province of Ontario) shall be deemed to be the address of such party and any party may require that notice be given to other persons, corporations or entities who or which may or may not have an interest in this Agreement and upon the giving of notice of such requirement and the address for such required notice (so long as it is within the Province of Ontario), then such person, corporation or entity shall be deemed to have been named above for the purpose of giving and receiving notice thereafter.
- (d) The captions used in this Agreement are for convenience only and shall not be construed in interpreting this Agreement. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine or the neuter gender shall include the masculine and neuter.



- (e) The parties agree that all of the provisions of this Agreement are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph hereof. Should any provision or provisions of this Agreement be illegal or not enforceable, it or they shall be considered separate and severable from the Agreement and its remaining provisions shall remain in full force and be binding upon the parties hereto as though the said provision or provisions had never been included.

15. The parties agree that the arbitration provision contained in Section 12 of the Interface Agreement shall apply to any dispute which arises in respect of the provisions hereof.

16. This Agreement may be executed in several counterparts each of which when executed by the parties shall be deemed to be an original and such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF the parties have hereunto caused to be affixed their respective corporate seals attested by the signatures of their respective proper officers duly authorized in that behalf.

**THE CORPORATION OF THE CITY OF HAMILTON**

\_\_\_\_\_  
Mayor (c/s)

\_\_\_\_\_  
City Clerk (c/s)

**LAKEVIEW DEVELOPMENT LTD.**

Per: \_\_\_\_\_ (c/s)

Per: \_\_\_\_\_ (c/s)

**LAKEVIEW DEVELOPMENT LTD.**  
(Sublessee under Instrument 153111 L.T.)

Per: \_\_\_\_\_ (c/s)

Per: \_\_\_\_\_ (c/s)

**KING STREET HAMILTON HOTEL LIMITED  
PARTNERSHIP**  
(Sublessee under Instrument 153111 L.T.)

Per: \_\_\_\_\_ (c/s)

Per: \_\_\_\_\_ (c/s)

be subject to the prior approval of Lakeview, such approval not to be unreasonably withheld.

- (d) For greater certainty, it is expressly agreed that realty taxes, if any, shall be deemed to be a cost of operation of the Bridge to be paid in accordance with these provisions.
- (e) The rent and the additional rent payable by Lakeview to the City under the Ground Lease shall not be reduced by reason of the Pedestrian Bridge being affixed to the Improvements of Lakeview or by reason of this Agreement between the parties.

7. The City shall, at all times during the term of this Agreement, affect and keep in force the following insurance:

- (a) a comprehensive general liability insurance policy with adequate limits thereof, insuring both Lakeview and the City (with a provision for cross liability and severability of interests) against claims for personal injury, death, property damage, or third party or public liability claims arising from the presence, existence, use, operation or maintenance of the Pedestrian Bridge or from any accident or occurrence upon, in or about the Pedestrian Bridge from any cause.
- (b) insurance in a sum not less than the full replacement cost of the Pedestrian Bridge (less a reasonable deductible in an amount satisfactory to the City), protecting the City from any loss or damage caused by:
  - (i) fire or such other perils as may from time to time be included in the standard fire insurance additional perils supplementary contract, generally available in Ontario;
  - (ii) risks normally insured against in Ontario for buildings and improvements of construction, location and uses similar to the Pedestrian Bridge; and,
  - (iii) the insurance policies shall be subject to a stated amount co-insurance clause, where applicable;
- (c) any and all policies of property insurance shall contain a waiver by the insurance company in favour of Lakeview of the insurance company's rights of subrogation;
- (d) proceeds of any policies of property insurance shall be payable to the City;
- (e) the City shall expend and apply the proceeds of insurance referred to in paragraph (d) above in rebuilding, reinstating, replacing and repairing

the Pedestrian Bridge, as permitted by the provisions of this Agreement provided that:

- (i) the City shall not be obliged to do so where Lakeview has been in default of this Agreement and after notice of such default, Lakeview has not commenced within thirty (30) days to remedy such breach, or, if such remedy has been commenced by Lakeview, has failed to complete such remedy within a reasonable time;
  - (ii) in the event the Bridge is substantially damaged, the City shall not be obliged to do so where the Schedule "A" leasehold premises have ceased to be used as an Hotel or where the Convention Centre (at the southerly limit of the Pedestrian Bridge) is no longer in operation as a Convention Centre; and,
  - (iii) subsections (i) and (ii) are for the sole benefit of the City and the City may, at its discretion, waive subsection (i) and (ii) or either of them.
- (f) Without limiting section 7(d) and (e), the City agrees that if for any reason the Pedestrian Bridge ceases to exist and is not rebuilt, reconstructed and replaced, the City shall, at its sole expense, repair and restore the portion of the Improvements of Lakeview to which the Bridge was attached to such condition so far as is practicable as the Improvements would have been in if the Pedestrian Bridge had never existed. Such work shall be reasonably consistent and in keeping with the balance of the Improvements of Lakeview.
8. (a) Lakeview shall at all times construct, maintain, repair, operate and replace its Improvements so as to support and accommodate the construction and use of the Pedestrian Bridge and other rights of the City herein and Lakeview shall not make nor permit any alteration to the Improvements on the Schedule "A" leasehold land during the term of this Agreement, which may, in the opinion of the City (acting reasonably), adversely affect the City's rights described herein, including, without limiting the generality of the foregoing, the construction, reconstruction, replacement, operation, maintenance, or repair of the Pedestrian Bridge or the use thereof, as set out in this Agreement.
- (b) Notwithstanding section 8(a) above or any other provision of this Agreement, nothing in this Agreement shall obligate Lakeview to construct, maintain, repair, operate or replace the Hotel or any of its Improvements on its leasehold land described in Schedule "A" if the Ground Lease is terminated or if Lakeview is permitted not to do so under section 6.05 of the Ground Lease and does not do so. Where Lakeview is permitted not to rebuild its Improvements under section

6.05 but does reconstruct or repair its Improvements or reconstruct and replace its Improvements with new Improvements, it shall do so so as to support and accommodate the reconstruction, replacement or repair as well as the use of the Pedestrian Bridge or the reconstructed Pedestrian Bridge pursuant to the rights of the City in this Agreement.

9. The parties acknowledge that King Street West, Hamilton, is a highway under the jurisdiction and control of The Regional Municipality of Hamilton-Wentworth ("Region") and that the Pedestrian Bridge may remain above this highway only during the pleasure of the Region and in the event the Region withdraws its permission to maintain the Pedestrian Bridge, then the City shall at its cost and expense, remove the Pedestrian Bridge forthwith thereafter and shall fulfill its obligations under section 7(f) hereof.

10. (a) This Agreement is subject to the approval of:

(i) the Ontario Provincial Minister of Municipal Affairs and Housing; and,

(ii) Canada Mortgage and Housing Corporation.

(b) The City will apply for the approvals set out in paragraph 10(a) and take all necessary steps for such applications. Lakeview agrees to cooperate in the obtaining of such approvals.

11. (a) If Lakeview shall fail or neglect to conform or comply with any of the terms, covenants and conditions contained in this Agreement (other than the covenants to pay sums required to be paid to the City by any provision of this Agreement), the City may notify Lakeview in writing of the default and Lakeview shall forthwith, after receiving such Notice, commence to remedy the breach complained of in such Notice within forty-five (45) days after the date of receipt of such Notice and shall thereafter proceed with reasonable diligence to complete the remedy of such breach.

(b) If any sum of money required to be paid to the City by any provision in this Agreement shall not be paid by Lakeview when such payment is due, the City may forward Notice in writing of such failure to Lakeview and the failure shall be cured by Lakeview with forty-five (45) days after the date of receipt of such Notice.

(c) If Lakeview does not cure its breach as required in subsections (a) and (b) as the case may be, then such breach or default shall be deemed to constitute a default of Lakeview under the Ground Lease and after the City has given a Notice of default pursuant to the Ground Lease, the City shall have its rights under the Ground Lease.

(d) Notices pursuant to this Agreement shall be in writing and delivered to the attention of an officer of the party receiving such notice.



Notices to the City shall be addressed as follows:

The Corporation of the City of Hamilton  
Attention: City Clerk  
71 Main Street West  
P.O. Box 2040  
HAMILTON, Ontario  
L8N 3T4

Notices to Lakeview shall be addressed as follows:

Lakeview Development Ltd.  
Attention: President  
6th Floor  
185 Carlton Street  
WINNIPEG, Manitoba  
R3C 3J1

with copy sent to:

McJannet, Weinberg, Rich  
Barristers & Solicitors  
5th Floor  
185 Carlton Street  
WINNIPEG, Manitoba  
R3C 3J1

Attention: Mr. J. T. McJannet, Q.C.

12. In this Agreement, the "Pedestrian Bridge" is the climate-controlled overpass for pedestrians, above and across King Street West, in the City of Hamilton, designed by Trevor P. Garwood-Jones, architect, shown on his plans numbered A1-A8, S1-S3, M1-M2 and E1-E4, which plans were last revised October, 1984 (including the replacement of such Pedestrian Bridge, if any) which Bridge extends between the City's Convention Centre fronting on the southerly limit of King Street West and Lakeview's leasehold land described in Schedule "A" fronting on the northerly limit of King Street West.

13. Time shall be of the essence of this Agreement.

14. (a) The City shall register this Agreement on title to Lakeview's leasehold land described in Schedule "A", after the execution hereof by the parties.

(b) This Agreement shall be binding upon Lakeview, its successors and its assigns permitted by the Ground Lease and this Agreement shall bind and run with the leasehold land described in Schedule "A".

(c) Lakeview covenants and agrees that it will not dispose, by way of sale, transfer and/or assignment, or in any other way whatsoever (excepting mortgages discussed in clause (d) below), of any of its interests in the leasehold land described in Schedule "A" attached hereto and in this

Agreement, without acquiring from any such purchaser, transferee or assignee, their agreement in favour of the City, satisfactory to the City, to abide by and be bound by all of the terms, covenants and conditions of this Agreement and without delivering such agreement to the City. The agreement shall be in the form attached hereto as Schedule "C". Such agreement after execution by the purchaser, transferee or assignee shall be registered on title contemporaneously with the transfer or assignment. Any such agreement arising from a transfer by Lakeview shall not have the effect of releasing Lakeview from its obligations and liabilities under the terms of this Agreement. Any such agreement arising from a transfer by the first assignee from Lakeview and any assignee subsequent thereto shall have the effect of releasing Lakeview and the assignor in question, as the case may be, from their respective obligations and liabilities under the terms of this Agreement, provided that the City has consented to such transfer or disposition in accordance with the requirements of the Ground Lease. Any transfer or assignment in contravention of this provision shall be null and void. For the purpose of this provision, any transfer or issue by sale, bequest, inheritance, operation of law or other disposition or by subscription from time to time of all or any part of the corporate shares of Lakeview which results, in the City's opinion, in any change in the present effective voting control of Lakeview, shall be deemed to be a disposition within the meaning of this provision, and the transferee shall be deemed to be the party or parties who acquire the said shares and the provisions herein regarding any disposition shall apply mutatis mutandis thereto.

- (d) Lakeview covenants and agrees that it will not mortgage any of its Leasehold Land described in Schedule "A" without acquiring from any such Mortgagee its covenant to the City to comply with this Bridge Agreement in the same manner that the Mortgagee is required by section 16.01 of the Ground Lease to agree to comply with the Ground Lease. Such covenant shall form part of the Mortgagee's Agreement with the City entered into pursuant to section 16.01 of the Ground Lease.

15. This Agreement may not be modified or amended, except by an Instrument in writing of equal formality herewith.

16. No waiver by any of the parties hereto of the breach of any covenant or provision hereunder shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenants or provisions hereunder. No waiver shall be effective unless in writing.

17. The parties agree that all of the provisions of this Agreement are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph hereof. Should any provision or provisions of this Agreement be illegal or not enforceable, it or they shall be considered separate and severable from the Agreement and its remaining provisions shall remain in

full force and be binding upon the parties hereto as though the said provision or provisions had never been included.

18. The parties agree that the arbitration provision contained in Section 12 of the Interface Agreement shall apply to any dispute which arises in respect of the provisions hereof.

19. This Agreement may be executed in several counterparts each of which when executed by the parties shall be deemed to be an original and such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF the parties have hereunto caused to be affixed their respective corporate seals attested by the signatures of their respective proper officers duly authorized in that behalf.

**LAKEVIEW DEVELOPMENT LTD.**  
(Sublessee under Instrument 153111 L.T.)

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**KING STREET HAMILTON HOTEL LIMITED  
PARTNERSHIP**  
(Sublessee under Instrument 153111 L.T.)

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**THE CORPORATION OF THE CITY OF  
HAMILTON**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

**LAKEVIEW DEVELOPMENT LTD.**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

LIST OF SCHEDULES

- Schedule "A" - Leasehold Land of Lakeview Development Ltd.
- Schedule "B" - Dominant Tenement of the City
- Schedule "C" - Form of Agreement referred to in sec. 14(c)



The Board of Directors of the Corporation has approved the following resolution:

Resolved, That the Corporation do hereby authorize the President or any officer or agent of the Corporation to execute and deliver to the Secretary of the State of New York a certificate of incorporation and the fees thereon.

Witness my hand and the seal of the Corporation this 1st day of January, 1911.

Attest: \_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

\_\_\_\_\_  
Treasurer

\_\_\_\_\_  
Vice-President

\_\_\_\_\_  
Director

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Director

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Director

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Director



# ACCOPRESS®



25070	YELLOW
25071	BLACK
25072	LIGHT BLUE
25073	DARK BLUE
25074	LIGHT GRAY
25075	LIGHT GREEN
25076	DARK GREEN
25077	TANGERINE
25078	RED
25079	EXECUTIVE RED

WITH WATER RESISTANT

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CHICAGO, ILLINOIS 60619



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